

TITLE VII
SPECIAL EDUCATIONCHAPTER 41
SPECIAL EDUCATION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 12]

DIVISION I
SCOPE AND GENERAL PRINCIPLES

281—41.1(256B,34CFR300,303) Scope. These rules apply to the provision of education to children requiring special education between birth and the age of 21, and to a maximum allowable age in accord with Iowa Code section 256B.8, who are enrolled or are to be enrolled in the public or nonpublic schools of this state or in state-operated education programs. In addition, they apply to children requiring special education and who are receiving early childhood special education home instruction or are receiving special education home service as described in subrule 41.88(2), in hospitals or in facilities other than schools. The requirement to provide special education is mandated under 20 U.S.C. Chapter 33, Individuals with Disabilities Education Act; 34 CFR Part 300, Assistance to States for the Education of Children with Disabilities, July 1, 1999; and Iowa Code chapter 256B, "Special Education." Under the provisions of 34 CFR §§300.2, 300.141 and 300.600, July 1, 1999, all agencies offering special education within this state shall comply with these rules.

281—41.2 Reserved.

281—41.3(256B) General principles.

41.3(1) Availability. Special education must be made available to all children requiring special education. For all persons referred to in rule 41.1(256B,34CFR300,303), required services include early identification; the development and implementation of an individualized education program (IEP), or an individualized family service plan (IFSP) for children under the age of three; assessment of student improvement resulting from the provision of special services; and instructional services, support services, supplemental services, special adaptations, related services, assistive technology, transportation and materials and equipment necessary to providing children requiring special education a free appropriate public education.

41.3(2) Responsibility. It is the responsibility of each eligible individual's resident local education agency (LEA) to provide or make provision for appropriate special education and related services to meet the requirements of state and federal statutes and rules. This responsibility may be met by one or more of the following: by each LEA acting for itself; by action of two or more LEAs through the establishment and maintenance of joint programs; by the area education agency (AEA); by contract for services from approved public or private agencies offering the appropriate special education and related services; or by any combination of these. The AEA shall support and assist LEAs in meeting their responsibilities in providing appropriate special education and related services. The requirements of 34 CFR Part 300, July 1, 1999, are binding on each public agency that has direct or delegated authority to provide special education and related services regardless of whether that agency is receiving funds under Part B.

41.3(3) Free appropriate public education (FAPE). LEAs and AEAs shall provide special education and related services at public expense, under public supervision and direction, and at no cost to the parents. The special education and related services provided shall meet the standards set forth in these rules and in 20 U.S.C. §§1401 et seq., applicable portions of 29 U.S.C. §794, and 42 U.S.C. §§2116 et seq.; includes early childhood, elementary, and secondary education; and is provided in conformity with an individualized education program (IEP) or individualized family service plan (IFSP) that meets the requirements of division VIII. The provision of a free appropriate public education also applies to children requiring special education who have been suspended or expelled from school in accordance with rules 41.71(256B.34CFR300) through 41.73(256B,34CFR300).

41.3(4) *Full educational opportunity.* Each LEA shall ensure the provision of full educational opportunity to children requiring special education. Full educational opportunity includes the variety of educational programs and services and nonacademic and extracurricular services and activities that are available to individuals who do not require special education.

a. Each public agency shall take steps to ensure that eligible individuals have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

b. Each public agency shall take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. Nonacademic and extracurricular activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

41.3(5) *Least restrictive environment (LRE).* Each agency shall ensure that, to the maximum extent appropriate, children requiring special education are educated with individuals who do not require special education and that special classes, separate schooling or removal of children requiring special education from the general education environment occurs only if the nature or severity of the individual's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily in accord with division VI.

41.3(6) *Appropriate program.* Each child requiring special education shall be provided a specially designed education program that is based on the individual's specific educational needs. The development and provision of an appropriate program shall be consistent with divisions VI and VIII.

a. An appropriate program shall include all special education and related services that are necessary to address the individual's educational needs.

b. An appropriate program shall be consistent with applicable research findings and appropriate educational practices. In the absence of empirical evidence on the efficacy of any one intervention strategy, the LEA and AEA personnel and parent responsible for developing the individual's IEP shall outline a program of education which meets the educational needs of the individual.

c. An appropriate program shall not include practices which are precluded by statute or these rules.

d. The responsible agency shall provide special education and related services in accord with the individual's IEP; but the agency, teacher, or other person is not held accountable if an individual does not achieve the growth projected in the annual goals and objectives of the IEP.

41.3(7) *Shared responsibility.* General education and special education personnel share responsibility in providing appropriate educational programs for eligible individuals and in providing intervention and prevention services to individuals who are experiencing learning or adjustment problems.

41.3(8) *Family involvement.* LEAs and AEAs share responsibility in promoting partnerships to increase family involvement and participation in the social, emotional, and academic development of students receiving special education.

41.3(9) *Maintenance of effort.* These rules implement Iowa Code chapters 256B and 273 and 34 CFR Part 300, July 1, 1999, and are designed to ensure the continued provision of appropriate special education and related services to students with disabilities consistent with the mandate described in Iowa Code chapter 256B and the scope defined in rule 41.1(256B,34CFR300,303). Consistent with this intent, no provision of these rules should be construed as reducing the commitment to individuals requiring special education.

281—41.4(34CFR300) Exceptions for certain individuals.

41.4(1) *Exception to FAPE.* The obligation to make FAPE available as described in subrule 41.3(3) does not apply to individuals aged 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility, were not identified as an eligible individual as defined in division II and did not have an IEP as described in division VIII.

41.4(2) *Requirements that do not apply.* The following requirements do not apply to eligible individuals who are convicted as adults and incarcerated in adult prisons:

a. The requirement relating to participation in districtwide assessment described in paragraph 41.67(1) “e.”

b. The requirement relating to transition planning and transition services described in subrule 41.67(2) for individuals whose eligibility will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

41.4(3) *Modifications to IEP or services.* The IEP team of an eligible individual, who is convicted as an adult and incarcerated in an adult prison, may modify the individual’s IEP or location of services if it has been demonstrated that a bona fide security or compelling penological interest cannot otherwise be accommodated. In such a circumstance, the IEP team can modify the requirements of subrules 41.67(1) relating to the contents of the IEP and 41.3(5) relating to LRE.

41.4(4) *Exceptions for students who have graduated.* Exceptions to FAPE apply to individuals with disabilities who have graduated from high school with a regular high school diploma. This exception does not apply to individuals who have graduated but have not been awarded a regular high school diploma.

DIVISION II
DEFINITIONS

281—41.5(256B,34CFR300) Definitions.

“*Agency*” is a public or nonpublic organization which offers special education and related services in one or more disability areas.

“*Appropriate activities*” means those activities that are consistent with age-relevant abilities or milestones that typically developing children of the same age would be performing or would have achieved.

“*Area education agency*” or “*AEA*” is an intermediate educational unit created by Iowa Code chapter 273.

“*Assistive technology device*” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of eligible individuals.

“*Assistive technology service*” means any service that directly assists an eligible individual in the selection, acquisition, or use of an assistive technology device.

“*At no cost*” means that all special education and related services are provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program. An AEA or LEA may ask, but not require, parents of children with disabilities to use public or private insurance proceeds to pay for services if they would not incur a financial cost as described in subrules 41.132(10) and 41.132(11).

“*Autism*” is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before the age of three, that adversely affects an eligible individual’s educational performance. If a child manifests characteristics of the disability category “autism” after the age of three, that child still could be diagnosed as having “autism” if the criteria in this definition are satisfied. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if an eligible individual’s educational performance is adversely affected primarily because the eligible individual has a serious emotional disturbance.

“Behaviorally disordered” is the inclusive term for patterns of situationally inappropriate behavior which deviate substantially from behavior appropriate to one’s age and significantly interfere with the learning process, interpersonal relationships, or personal adjustment of the individual to such an extent as to constitute a behavioral disorder.

1. Clusters of behavior characteristic of eligible individuals who are behaviorally disordered include: Cluster I—Significantly deviant disruptive, aggressive or impulsive behaviors; Cluster II—Significantly deviant withdrawn or anxious behaviors; and Cluster III—Significantly deviant thought processes manifested with unusual communication or behavioral patterns or both. An eligible individual’s behavior pattern may fall into more than one of the above clusters.

2. The determination of significantly deviant behavior is the conclusion that the individual’s characteristic behavior is sufficiently distinct from that of the individual’s peer group to qualify the individual as requiring special education on the basis of a behavioral disorder. The behavior of concern shall be observed in the school setting for school-aged individuals and in the home or center-based setting for preschool-aged individuals. It must be determined that the behavioral disorder is not maintained by primary intellectual, sensory, cultural or health factors.

3. In addition to those data required within the full and individual evaluation for each individual, data which describe the qualitative nature, frequency, intensity, and duration of the behavior of concern shall be gathered when identifying an individual as behaviorally disordered. If it is determined that any of the areas of data collection are not relevant in assessing the behaviors of concern, documentation must be provided explaining the rationale for such a decision. Such documentation will be reviewed and maintained by the director.

(a) “Setting analysis data” is information gathered through informal observations, anecdotal record review and interviews describing the setting from which an individual was referred; documented prior attempts to modify the individual’s educational program so as to make behavioral and academic achievement possible in the current placement; and social functioning data that includes information, gathered from sources such as teacher interviews and sociometric measures, regarding the referred individual’s interaction with peers.

(b) “Individual behavioral data” are measures of actual behavior that include the specific recording, through systematic formal observations, of an individual’s behavior, including the frequency of behaviors of concern; and measures of reported behavior that include checklists or rating scales and interviews that document the perceptions of school personnel regarding the behavioral pattern of the referred individual and the perception of the individual’s home and school behavior obtained from the parent or surrogate parent.

(c) “Individual trait data” is information about the unique personal attributes of the individual. This information, gathered through interviews with the referred individual and teachers and relevant personality assessments, describes any distinctive patterns of behavior which characterize the individual’s personal feelings, attitudes, moods, perceptions, thought processes and significant personality traits.

“Board” means the Iowa state board of education.

“Children requiring special education” are those individuals handicapped in obtaining an education as specified in Iowa Code chapter 256B, as defined in these rules and referred to as an eligible individual.

“Children who are handicapped in obtaining an education” are those individuals with disabilities who are unable to receive educational benefit from the general education experience without the provision of special education and related services as defined in these rules. In these rules, they are referred to as an eligible individual.

“Communication disability” means a disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects an individual’s educational performance.

“Day” means calendar day unless otherwise indicated as business day or school day:

1. “Business day” means Monday through Friday, except for federal and state holidays (unless holidays are specifically included in the designation of business day, as in subparagraph 41.74(2) “d”(1)); and

2. “School day” means any day, including a partial day, that children are in attendance at school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.

“*Deaf-blindness*” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education and related services solely for individuals with deafness or individuals with blindness.

“*Deafness*,” a physical disability, means a hearing impairment that is so severe that the individual is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects an individual’s educational performance.

“*Department*” means the state department of education.

“*Director*” means the director of special education of the AEA.

“*Director of education*” means the state director of the department of education.

“*Early childhood special education*” or “*ECSE*” means special education and related services for those individuals below the age of six.

“*Eligible individual*” means an individual with a disability who is handicapped in obtaining an education and who is entitled to receive special education and related services. The term includes an individual who is over 6 and under 16 years of age who, pursuant to the statutes of this state, is required to receive a public education; an individual under 6 or over 16 years of age who, pursuant to the statutes of this state, is entitled to receive a public education; and an individual between the ages of 21 and 24 who, pursuant to the statutes of this state, is entitled to receive special education and related services. In federal usage, this refers to infants, toddlers, children and young adults.

“*General curriculum*” means the curriculum adopted by an LEA or schools within the LEA for all children from preschool through secondary school.

“*General education interventions*” means attempts to resolve presenting problems or behaviors of concern in the general education environment prior to conducting a full and individual evaluation as described in subrule 41.48(2).

“*Head injury*” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects an individual’s educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

“*Hearing impairment*,” a physical disability, means an impairment in hearing, whether permanent or fluctuating, that adversely affects an individual’s educational performance but that is not included under the definition of deafness in this division.

“*IEP team*” is the group of individuals specified in division VIII that is responsible for developing, reviewing or revising an IEP for an eligible individual.

“*Include*” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

“*Individualized education program*” or “*IEP*” is the written record of an eligible individual’s special education and related services developed in accord with division VIII. The IEP document records the decisions reached at the IEP meeting and sets forth in writing a commitment of resources necessary to enable an eligible individual to receive needed special education and related services appropriate to the individual’s special learning needs. There is one IEP which specifies all the special education and related services for an eligible individual.

“*Individualized family service plan*” or “*IFSP*” means a written plan for providing early intervention services to an individual eligible for such services under 34 CFR 303, July 1, 1999, and the individual’s family.

“Learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to individuals who have learning problems that are primarily the result of physical or mental disabilities, behavioral disorder, or environmental, cultural, or economic disadvantage.

“Local education agency” or *“LEA”* is the local school district.

“Mental disability” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects an individual’s educational performance.

“Multicategorical” means special education in which the individuals receiving special education have different types of disabilities.

“Multiple disabilities” means concomitant impairments (such as mental disabilities-blindness, mental disabilities-orthopedic impairments), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

“Native language,” when used with reference to an individual of limited English proficiency, means the language normally used by that individual or, in the case of a child, the language normally used by the parents of the child. In using the term, these rules do not prevent the following means of communication:

1. In all direct contact with a child, including evaluation of the child, communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

2. For individuals with deafness or blindness, or for individuals with no written language, the mode of communication would be that normally used by the individual, such as sign language, braille, or oral communication.

“Orthopedic impairment,” a physical disability, means a severe orthopedic impairment that adversely affects an individual’s educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

“Other health impairment,” a physical disability, means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, attention deficit disorder or attention deficit hyperactivity disorder, or diabetes, that adversely affects an individual’s educational performance.

“Parent” means a natural or adoptive parent, a guardian, or a surrogate parent who has been appointed in accord with these rules. The term does not include the state if the child is a ward of the state. The term includes persons acting in the place of a parent, such as a grandparent or stepparent with whom an individual lives, as well as persons who are legally responsible for an individual’s welfare. A foster parent may act as a parent under these rules if the natural parents’ authority to make educational decisions on the individual’s behalf has been extinguished under state law and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the educational decisions required of parents under these rules; and has no interest that would conflict with the interests of the individual.

“Physical disability” is the inclusive term used in denoting deafness, hearing impairments, orthopedic impairments, other health impairments, and vision impairments including blindness of eligible individuals.

“Related services” means transportation and such developmental, corrective and other services as are required to assist an individual with a disability to benefit from special education.

“School district of the child’s residence” or *“district of residence of the child”* is that school district in which the parent of the individual resides, with the following statutory and legal interpretations:

1. When full and complete control of an eligible individual is transferred from a parent to others for the purpose of acquiring a home rather than to obtain a free education, the district of residence of the individual is the district in which the individual and those who have accepted full and complete control of the individual reside, and that district becomes responsible for providing and funding the special education and related services.

2. If full and complete control of an eligible individual is transferred by a parent to others who reside in another LEA for the purpose of obtaining an education, the district of residence remains with the parent; therefore, the parent must pay tuition to the receiving district. The district of residence cannot be held responsible for tuition payment.

3. “Children living in a foster care facility” are individuals requiring special education who are living in a licensed child foster care facility as defined in Iowa Code section 237.1 or in a facility providing residential treatment as defined in Iowa Code section 125.2. District of residence of an individual living in a foster care facility and financial responsibility for special education and related services is determined in accord with the provisions of subrule 41.132(5).

4. “Children placed by the district court” are pupils requiring special education for whom parental rights have been terminated and who have been placed in a facility or home by a district court. Financial responsibility for special education and related services of individuals placed by the district court is determined in accord with subrule 41.132(6).

“Severely disabled” are individuals with any severe disability including individuals who are profoundly multiply disabled.

“Special education” means specially designed instruction, at no cost to the parents, to meet the unique needs of an eligible individual. It includes the specially designed instruction conducted in schools, in the home, in hospitals and institutions, and in other settings; instruction in physical education; and includes vocational education if it consists of specially designed instruction. The term includes the services described in division IX if the services consist of specially designed instruction, at no cost to the parents, to meet the unique needs of an eligible individual, or are required to assist eligible individuals in taking advantage of, or responding to, educational programs and opportunities. Special education provides a continuum of services in order to provide the least restrictive intervention needed to meet the educational needs of each eligible individual regardless of the nature or severity of the educational needs.

“Specially designed instruction” means adapting content, methodology or delivery of instruction to address the unique needs of an eligible individual that result from the individual’s disability and to ensure access of the eligible individual to the general curriculum, so that the educational standards of the LEA or schools within the LEA that apply to all children can be met.

“Systematic progress monitoring” means a systematic procedure for collecting and displaying an individual’s performance over time for the purpose of making educational decisions.

“Transition services” means a coordinated set of activities for an eligible individual, designed in an outcome oriented process, that promotes movement from school to postschool education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation. The coordinated set of activities is based on the needs of the eligible individual, taking into account the individual’s preferences and interests. The set of activities includes instruction, related services, community experiences, development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational education.

“Visual impairment including blindness,” a physical disability, means an impairment in vision that, even with correction, adversely affects an individual’s educational performance. The term includes both partial sight and blindness. Individuals who have a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

“*Vocational education*” means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

281—41.6(256B,34CFR300) Acronyms. Selected acronyms frequently used in these rules:

- “*AEA*” is the area education agency.
- “*ECSE*” means early childhood special education.
- “*FAPE*” means free appropriate public education.
- “*IEP*” means individualized education program.
- “*IFSP*” means individualized family service plan.
- “*LEA*” is the local education agency (school district).
- “*LRE*” means least restrictive environment.

281—41.7 Reserved.

DIVISION III
PERSONNEL

281—41.8(256B,34CFR300) Licensure (certification). Special education personnel shall meet the board of educational examiners’ licensure (certification) and endorsement or recognition requirements for the position for which they are employed. In addition, personnel providing special education and related services who do not hold board of educational examiners’ licensure (certification) or other recognition required by its board, and who, by the nature of their work, are required to hold a professional or occupational license, certificate or permit in order to practice or perform the particular duties involved in this state shall be required to hold a license, certificate, or permit.

281—41.9(256B,273,34CFR300) Authorized personnel. An agency is authorized to employ the following types of special education personnel, as appropriate to the special education and related services provided:

41.9(1) *Director of special education.* The director, as required by Iowa Code section 273.5, shall function as an advocate for eligible individuals and assist the department in meeting the intent of the special education mandate and complying with statutes and rules. The director shall be responsible for the implementation of special education for eligible individuals pursuant to Iowa Code section 273.5 and these rules. The director shall be employed on a full-time basis and shall not be assigned the responsibility for any other administrative unit within the AEA. It shall be the responsibility of the director to report any violation of these rules to the department for appropriate action.

41.9(2) *Special education instructional personnel.* Special education instructional personnel serve as teachers or instructional assistants at the preschool, elementary or secondary levels for eligible individuals.

41.9(3) *Special education support personnel.* The following positions are those of special education support personnel who provide special education and related services as stated in each definition. These personnel work under the direction of the director and may provide identification, evaluation, remediation, consultation, systematic progress monitoring, continuing education and referral services in accord with appropriate licensure (certification) and endorsement or approval, or statement of professional recognition. They may also engage in data collection, applied research and program evaluation.

a. “*Assistant director of special education*” provides specific areawide administrative, supervisory and coordinating functions as delegated by the director.

b. “*Audiologist*” applies principles, methods and procedures for analysis of hearing functioning in order to plan, counsel, coordinate and provide intervention strategies and services for individuals with deafness or hearing impairments.

c. “*Consultant*” is the special education instructional specialist who provides ongoing support to special and general education instructional personnel delivering services to eligible individuals. The consultant participates in the identification process and program planning of eligible individuals as well as working to attain the least restrictive environment appropriate for each eligible individual. The consultant demonstrates instructional procedures, strategies, and techniques; assists in the development of curriculum and instructional materials; assists in transition planning; and provides assistance in classroom management and behavioral intervention.

d. “*Educational strategist*” provides assistance to general education classroom teachers in developing intervention strategies for individuals who are disabled in obtaining an education but can be accommodated in the general education classroom environment.

e. “*Itinerant teacher*” provides special education on an itinerant basis to eligible individuals.

f. “*Occupational therapist*” is a licensed health professional who applies principles, methods and procedures for analysis of, but not limited to, motor or sensorimotor functions to determine the educational significance of identified problem areas including fine motor manipulation, self-help, adaptive work skills, and play or leisure skills in order to provide planning, coordination, and implementation of intervention strategies and services for eligible individuals.

g. “*Physical therapist*” is a licensed health professional who applies principles, methods and procedures for analysis of motor or sensorimotor functioning to determine the educational significance of motor or sensorimotor problems within, but not limited to, areas such as mobility and positioning in order to provide planning, coordination, and the implementation of intervention strategies and services for eligible individuals.

h. “*School psychologist*” assists in the identification of needs regarding behavioral, social, emotional, educational and vocational functioning of individuals; analyzes and integrates information about behavior and conditions affecting learning; consults with school personnel and parents regarding planning, implementing and evaluating individual and group interventions; provides direct services through counseling with parents, individuals and families; and conducts applied research related to psychological and educational variables affecting learning.

i. “*School social worker*” enhances the educational programs of individuals by assisting in identification and assessment of individuals’ educational needs including social, emotional, behavioral and adaptive needs; provides intervention services including individual, group, parent and family counseling; provides consultation and planning; and serves as liaison among home, school and community.

j. “*Special education coordinator*” facilitates the provision of special education within a specific geographic area.

k. “*Special education media specialist*” is a media specialist who facilitates the provision of media services to eligible individuals; provides consultation regarding media and materials used to support special education and related services for eligible individuals; and aids in the effective use of media by special education personnel.

l. “*Special education nurse*” is a professional registered nurse who assesses, identifies and evaluates the health needs of eligible individuals; interprets for the family and educational personnel how health needs relate to individuals’ education; implements specific activities commensurate with the practice of professional nursing; and integrates health into the educational program.

m. “*Speech-language pathologist*” applies principles, methods and procedures for an analysis of speech and language comprehension and production to determine communicative competencies and provides intervention strategies and services related to speech and language development as well as disorders of language, voice, articulation and fluency.

n. “*Supervisor*” is the professional discipline specialist who provides for the development, maintenance, supervision, improvement and evaluation of professional practices and personnel within a specialty area.

o. “*Work experience coordinator*” plans and implements, with LEA personnel, sequential secondary programs which provide on- and off-campus work experience for individuals requiring specially designed career exploration and vocational preparation when they are not available through the general education curriculum.

p. “*Others (other special education support personnel)*” may be employed as approved by the department and board of educational examiners.

281—41.10(256B) Paraprofessionals.

41.10(1) Responsibilities. Special education personnel may be employed to assist in the provision of special education and related services to children with disabilities and shall:

a. Complete appropriate preservice and ongoing staff development specific to the functions to be performed. The agency shall make provisions for or require such completion prior to the beginning of service wherever practicable and within a reasonable time of the beginning of service where the preentry completion is not practicable.

b. Work under the supervision of professional personnel who are appropriately authorized to provide direct services in the same area where the paraprofessional provides assistive services.

c. Not serve as a substitute for appropriately authorized professional personnel.

41.10(2) Authorized special education paraprofessionals. Authorized special education paraprofessional roles include:

a. “*Audiometrist*” provides hearing screening and other specific hearing-related activities as assigned by the audiologist.

b. “*Educational interpreter*” interprets or translates spoken language into sign language commensurate with the receiver’s language comprehension and interprets or translates sign language into spoken language.

c. “*Licensed practical nurse*” shall be permitted to provide supportive and restorative care to an eligible individual in the school setting in accordance with the student’s health plan when under the supervision of and as delegated by the registered nurse employed by the school district.

d. “*Occupational therapy assistant*” is licensed to perform occupational therapy procedures and related tasks that have been selected and delegated by the supervising occupational therapist.

e. “*Para-educator*” is a licensed educational assistant as defined in Iowa Code section 272.12.

f. “*Physical therapist assistant*” is licensed to perform physical therapy procedures and related tasks that have been selected and delegated by the supervising physical therapist.

g. “*Psychology assistant*” collects screening data through records review, systematic behavior observations, standardized interviews, group and individual assessment techniques; implements psychological intervention plans; and maintains psychological records under supervision of the school psychologist.

h. “*Speech-language pathology assistant*” provides certain language, articulation, voice and fluency activities as assigned by the supervising speech-language pathologist.

i. “*Vision assistant*” provides materials in the appropriate medium for use by individuals with visual impairment including blindness and performs other duties as assigned by the supervising teacher of individuals with visual impairments.

j. “*Others*” as approved by the department, such as educational assistants described in Iowa Administrative Code 281—subrule 12.4(9).

281—41.11 Reserved.

DIVISION IV RESPONSIBILITIES OF AGENCIES

281—41.12(256B,273,34CFR300) Responsibilities of all agencies. These provisions are applicable to each agency which provides special education and related services.

41.12(1) *Provision of special education.* It is the responsibility of each agency to provide each resident individual appropriate special education and related services except in those cases where it is expressly otherwise provided by state statute. This responsibility may be fulfilled by using the services described in division IX of these rules.

41.12(2) *Compliance with Federal Code.* Each agency shall adhere to the provisions of and implementing regulations to 20 U.S.C. §§1401 et seq., applicable portions of 29 U.S.C. §794 pertaining to eligible individuals and Title 42 U.S.C. §§2116 et seq.

41.12(3) *Evaluation and improvement.* Each agency, in conjunction with other agencies, the department, or both, shall implement activities designed to evaluate and improve special education. These activities shall document the individual performance resulting from the provision of special education.

41.12(4) *Research.* Each agency shall cooperate in research activities designed to evaluate and improve special education when such activities are sponsored by an LEA, AEA or the department, or another agency when approved by the department to assess and ensure the effectiveness of efforts to educate all children with disabilities.

41.12(5) *Records and reports.* Each agency shall maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum:

- a. Licensure (certification) and endorsements or recognition requirements for all special education personnel as per requirements described in rule 41.8(256B,34CFR300).
- b. All IEP and IFSP meetings and three-year reevaluations for each eligible individual.
- c. Data required for federal and state reporting.

41.12(6) *Policies.* Policies related to the provision of special education and related services shall be developed by each agency and made available to the department upon request to include the following:

- a. Policy to ensure the provision of a free appropriate public education as defined in subrule 41.3(3).
- b. The provision of special education and related services pursuant to Iowa Code chapters 256B and 273 and these rules.
- c. Policies to ensure the provision of special education and related services in the least restrictive environment in accord with rule 41.38(256B,34CFR300) and division IX of these rules.
- d. All requirements for protecting the confidentiality of personally identifiable information.
- e. The graduation requirements for eligible individuals.
- f. Requirements for administration of medications including a written medication administration record.
- g. Special health services.
- h. Policy to ensure the establishment of performance goals and indicators for eligible individuals.
- i. Policy to ensure the participation of eligible individuals in districtwide assessment programs.
- j. Policy to ensure that the participation and performance results of eligible individuals in districtwide assessments are reported to the public.

41.12(7) *Procedures.* Each agency shall develop written procedures pertinent to the provision of special education and related services and shall make such procedures available to the department upon request and shall, at a minimum, include:

- a. Procedures to ensure the provision of special education and related services pursuant to Iowa Code chapters 256B and 273 and these rules.
- b. Procedures for protecting the confidentiality of personally identifiable information.
- c. Procedures for the graduation of eligible individuals.
- d. Procedures for administration of medications including a written medication administration record.
- e. Procedures for providing special health services.
- f. Procedures for providing continuing education opportunities.
- g. Each agency shall establish a procedure for its continued participation in the development of the eligible individual's IEP in out-of-state placements and shall outline a program to prepare for the eligible individual's transition back to the LEA before the eligible individual is placed out of state.

h. Procedures for ensuring procedural safeguards for children with disabilities and their parents in accordance with divisions X and XI of these rules.

i. Procedures for the establishment of performance goals and indicators for eligible individuals.

j. Procedures to ensure the participation of eligible individuals in districtwide assessment programs.

k. Procedures to ensure that the participation and performance results of eligible individuals in districtwide assessments are reported to the public.

41.12(8) *Contracts.* Each agency contracting with other agencies to provide special education and related services for individuals or groups of individuals shall maintain responsibility for individuals receiving such special education and related services by:

a. Ensuring that all the requirements related to the development of each eligible individual's IEP are met.

b. Ensuring the adequacy and appropriateness of the special education and related services provided by requiring and reviewing periodic progress reports.

c. Conditioning payments on delivery of special education and related services in accord with the eligible individual's IEP and in compliance with these rules.

41.12(9) *Out-of-state placements.* When special education and related services appropriate to an eligible individual's needs are not available within the state, or when appropriate special education and related services in an adjoining state are nearer than the appropriate special education and related services in Iowa, the director may certify an eligible individual for appropriate special education and related services outside the state in accord with Iowa Code section 273.3 when it has been determined by the department that the special education and related services meet standards set forth in these rules.

41.12(10) *Department approval for out-of-state placement.* Contracts may be negotiated with out-of-state agencies, in accord with Iowa Code section 273.3(5), with department approval. The department will use the following procedures to determine if an out-of-state agency meets the rules of the board:

a. When requested to determine an agency's approval status, the department will contact the appropriate state education agency to determine if that state's rules are comparable to those of the board and whether the specified out-of-state agency meets those rules.

b. If the appropriate state education agency's rules are not comparable, the out-of-state agency will be contacted by the department to ascertain if its special education complies with the rules of the board.

41.12(11) *Medication administration.* Each agency shall establish medication administration policy and procedures which include the following:

a. A statement on administration of prescription and nonprescription medication.

b. A statement on an individual health plan, when administration requires ongoing professional health judgment.

c. A statement that persons administering medication shall include licensed registered nurses, physicians and persons who have successfully completed a medication administration course reviewed by the board of pharmacy examiners. Individuals who have demonstrated competency in administering their own medications may self-administer their medication.

d. Provision for a medication administration course and periodic update. A registered nurse or licensed pharmacist shall conduct the course. A record of course completion shall be maintained by the school.

e. A requirement that the individual's parent provide a signed and dated written statement requesting medication administration at school.

f. A statement that medication shall be in the original labeled container either as dispensed or in the manufacturer's container.

g. A written medication administration record shall be on file at school including:

(1) Date.

(2) Individual's name.

(3) Prescriber or person authorizing administration.

- (4) Medication.
- (5) Medication dosage.
- (6) Administration time.
- (7) Administration method.
- (8) Signature and title of the person administering medication.
- (9) Any unusual circumstances, actions or omissions.

h. A statement that medication shall be stored in a secured area unless an alternate provision is documented.

i. A requirement for a written statement by the individual's parent or guardian requesting individual coadministration of medication, when competency is demonstrated.

j. A requirement for emergency protocols for medication-related reactions.

k. A statement regarding confidentiality of information.

281—41.13 and 41.14 Reserved.

281—41.15(256B,34CFR300) LEA responsibilities. In addition to the requirements of rule 41.12(256B,273,34CFR300), the following provisions are applicable to each LEA which provides special education and related services.

41.15(1) Policies. Each LEA shall develop written policies pertinent to the provision of special education and related services, and shall make such policies available to the department upon request. At a minimum, such policies shall include those identified in subrule 41.12(6).

41.15(2) Procedures. Each LEA shall develop written procedures pertinent to the provision of special education and related services, and shall make such procedures available to the department upon request. At a minimum, such procedures shall include those identified in subrule 41.12(7).

41.15(3) Plans. Districtwide plans required by the department or federal programs and regulations shall address eligible individuals and describe the relationship to or involvement of special education services.

41.15(4) Nonpublic schools. Each LEA shall provide special education and related services designed to meet the needs of nonpublic school students with disabilities residing in the jurisdiction of the agency in accord with Iowa Code sections 256.12(2) and 273.2.

41.15(5) Comprehensive system of personnel development (CSPD). The LEA, in conjunction with the AEA, the department, or both, shall assist with the procedures and activities described in rule 41.20(256B,34CFR300) to ensure an adequate supply of qualified personnel as defined in board of educational examiners 282—Chapters 14 and 15, including special education and related services personnel and leadership personnel.

281—41.16 and 41.17 Reserved.

281—41.18(256B,273,34CFR300) AEA responsibilities. In addition to the requirements of rule 41.12(256B,273,34CFR300), the following provisions are applicable to each AEA which provides special education and related services.

41.18(1) Policies. Each AEA shall develop written policies pertinent to the provision of special education and related services and shall make such policies available to the department upon request. At a minimum, such policies shall include those identified in 41.12(6)“a” to “g” and the following:

a. Appointment of surrogate parents, rule 41.110 (256B,34CFR300).

b. Provision of and payment for independent educational evaluation, rule 41.109(256B,34CFR300).

c. Policy to ensure the provision of a free appropriate public education as defined in subrule 41.3(3).

d. Policy to ensure the goal of providing a full educational opportunity to all eligible individuals as defined in subrule 41.3(4).

- e.* Policy addressing the methods of ensuring services to eligible individuals.
 - f.* Child find policy that ensures that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.
 - g.* Evaluation and determination of eligibility policy for identifying students who require special education that meet the requirements of division VII of these rules, including a description of the extent to which the AEA system uses categorical designations. While AEAs may identify students as eligible for special education without designating a specific disability category, it is recognized that in certain circumstances the educational diagnosis of a specific disability, such as autism or sensory impairment, may enhance the development and ongoing provision of an appropriate educational program.
 - h.* Policy for the development, review and revision of IEPs.
 - i.* Policy for transition from Part C to Part B as specified in rule 41.75(256B,34CFR300,303).
 - j.* Policy for provision of special education and related services to students in nonpublic schools.
- 41.18(2) Procedures.** Each AEA shall develop written procedures pertinent to the provision of special education and related services and shall make such procedures available to the department upon request. At a minimum, such procedures shall include those identified in subrule 41.12(7) and the following:
- a.* Appointment of surrogate parents, rule 41.110 (256B,34CFR300).
 - b.* Provision of and payment for independent educational evaluation, rule 41.109(256B,34CFR300).
 - c.* Procedures for monitoring the caseloads of LEA and AEA special education personnel to ensure that the IEPs of eligible individuals are able to be fully implemented. The description shall include the procedures for timely and effective resolution of concerns about caseloads and paraprofessional assistance which have not been resolved satisfactorily pursuant to subparagraph 41.84(2)“b”(3).
 - d.* Procedures for evaluating the effectiveness of services in meeting the needs of eligible individuals in order to receive federal assistance under 34 CFR §300.240, July 1, 1999.
 - e.* Child find procedures that ensure that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.
 - f.* Evaluation and determination of eligibility procedures for identifying students who require special education that meet the requirements of division VII of these rules, including a description of the extent to which the AEA system uses categorical designations.
 - g.* Procedures for the development, review and revision of IEPs.
 - h.* Procedures to ensure the provision of special education and related services in the least restrictive environment in accord with rule 41.38(256B,34CFR300) and division IX of these rules.
 - i.* Procedures for transition from Part C to Part B as specified in rule 41.75(256B,34CFR300,303).
 - j.* Procedures for provision of special education and related services to students in nonpublic schools.
 - k.* Procedures describing the methods of ensuring services to eligible individuals.
- 41.18(3) Responsibility for provision of special education.** AEAs contracting with LEAs or other agencies to provide special education and related services for eligible individuals or groups of eligible individuals shall maintain responsibility for the provision of such special education and related services by:
- a.* Ensuring that all the requirements of special education related to the development of each eligible individual's IEP or IFSP are met.
 - b.* Ensuring the adequacy and appropriateness of the special education and related services provided by requiring and reviewing periodic progress reports.
 - c.* Conditioning payments on the delivery of special education and related services in accord with each eligible individual's IEP or IFSP and in compliance with these rules.

41.18(4) *Responsibility for monitoring of compliance.* The AEA shall conduct activities in each constituent LEA at least once every five years to monitor compliance with the provisions of all applicable federal and state statutes and regulations and rules applicable to the education of eligible individuals. A written report describing the monitoring activities, findings, corrective action plans, follow-up activities, and timelines shall be developed and made available for review by the department upon request. Monitoring of compliance activities shall meet all requirements of division XIV in these rules.

41.18(5) *AEA reports.* Each AEA shall provide the department with such data as are necessary to fulfill federal and state reporting requirements under the provisions of 20 U.S.C. §§1400 et seq. Data shall be provided in the format specified or on forms provided by the department and within timelines established by the department.

41.18(6) *Educate and inform.* The AEA shall provide the department with a description of proactive steps to inform and educate parents, AEA and LEA staff regarding eligibility, identification criteria and process, and due process steps to be followed when parents disagree regarding eligibility.

41.18(7) *Coordination of services.* The AEA shall provide the department with a description of how the AEA identification process and LEA delivery systems for instructional services will be coordinated.

281—41.19 Reserved.

281—41.20(256B,34CFR300) *Personnel development.* The AEA shall ensure that personnel necessary to carry out the requirements of these rules are appropriately and adequately prepared and trained consistent with the state's comprehensive system of personnel development, and to the extent the AEA determines appropriate, shall contribute to and use the comprehensive system of personnel development of the state.

281—41.21 Reserved.

281—41.22(256B,273,34CFR300) *AEA eligibility for federal funds.*

41.22(1) *Required descriptions, policies and procedures.* Each AEA shall submit to the department the policies and procedures identified in subrules 41.18(1) and 41.18(2) and other descriptions that may be required by the department for approval. These descriptions, policies and procedures shall remain in effect until modifications are made in response to changes in federal code or regulations, changes in state code, a new interpretation of federal code or regulation or state code or administrative rule by a federal court or the state's highest court. Any modifications to an AEA's descriptions, policies or procedures shall be submitted to the department for approval.

41.22(2) *AEA application.* Each AEA shall submit to the department, 45 calendar days prior to the start of the project year, an application for federal funds under 20 U.S.C. Chapter 33, and 34 CFR Part 300, July 1, 1999. An AEA application shall only receive department approval when there is an approved AEA comprehensive plan as described in rule 281—72.9(273) on file at the department and the requirements of subrule 41.22(1) have been met.

The application, on forms provided by the department, shall include the following:

- a. General information.
- b. Utilization of funds.
- c. Assurances.

281—41.23(256B) Special school provisions.

41.23(1) Providers. Special schools for eligible individuals who require special education outside the general education environment may be maintained by individual LEAs; jointly by two or more LEAs; by the AEA; jointly by two or more AEAs; by the state directly; or by approved private providers.

41.23(2) Department recognition. Department recognition of agencies providing special education and related services shall be of two types:

a. Recognition of nonpublic agencies and state-operated programs providing special education and related services in compliance with these rules.

b. Approval for the nonpublic agency to provide special education and related services, and to receive special education funds for the special education and related services contracted for by an LEA or an AEA.

281—41.24(256B,34CFR300) Length of school day. The length of the school day for eligible individuals shall be the same as that determined by the LEA board for all other individuals unless a shorter day is prescribed in the eligible individual's IEP.

281—41.25(256B,34CFR76,104,300) Facilities.

41.25(1) Equivalent to general education. Each agency providing special education and related services shall supply facilities which shall be at least equivalent in quality to general education classrooms in the system, located in buildings housing regularly enrolled individuals of comparable ages, and readily accessible to individuals with disabilities pursuant to 34 CFR §104.21. No eligible individual shall be denied the benefits of, or be excluded from participation in, or otherwise be subjected to discrimination under any program activity because an agency's facilities are inaccessible.

41.25(2) Personnel space and assistance. Each agency providing special education shall ensure that special education personnel are provided adequate access to telephone service and clerical assistance, and sufficient and appropriate work space regularly available for their use which is readily accessible to individuals with disabilities pursuant to 34 CFR Part 104.

281—41.26(256B) Materials, equipment and assistive technology.

41.26(1) Provision for materials, equipment, and assistive technology. Each LEA shall make provision for special education and related services, facility modifications, assistive technology, necessary equipment and materials, including both durable items and expendable supplies; provided that, where an AEA, pursuant to appropriate arrangements authorized by the Iowa Code, furnishes special education and related services, performance by the AEA shall be accepted in lieu of performance by the LEA.

41.26(2) Acquire and maintain equipment. Each agency providing special education and related services shall have a comprehensive program in operation under which equipment for special education is acquired, inventoried, maintained, calibrated and replaced on a planned and regular basis.

41.26(3) Provide special equipment. The agency responsible for the provision of special education and related services shall provide assistive technology, special aids, equipment, materials or supplies as necessary.

41.26(4) Functioning of hearing aids. Each agency shall develop and implement a plan to ensure that the hearing aids worn by individuals with hearing impairments (including deafness) in school are functioning properly.

281—41.27(256B) Rules exceptions.

41.27(1) *Department approval.* In unique circumstances, the director or, in a state-operated program, the superintendent or designee may request a rule exception from the department.

a. Requests must be filed with the department, on forms provided, and approval granted prior to the intended action. Department action on a request for a rule exception shall be communicated in writing to the director or, in a state-operated program, the superintendent and, if granted, such an exception shall be valid for that academic year.

b. The department will use the following criteria in the review and approval of all requests for a rule exception. The request:

(1) Does not ask for a waiver of any of the requirements of 20 U.S.C. Chapter 33, 34 CFR Part 300, July 1, 1999, or divisions I, V, VI, VIII, X, and XI of these rules.

(2) Is necessary to provide an appropriate education to an eligible individual or group of eligible individuals, or is designed to improve the requesting agency's delivery of services.

(3) Is supported by substantive evidence indicating the need and rationale for the request.

41.27(2) *Adjusted program reports.* The director or, in a state-operated program, the superintendent or designee, may grant an adjusted program status when an LEA or state-operated program uses the program models described in subrule 41.84(1). An adjusted program report shall document such action and shall be maintained by the director or superintendent. The adjusted program status shall be approved by the director or superintendent within 30 calendar days of the action, shall be valid for that academic year, and shall be used for the following circumstances:

a. Program model: An individual is appropriately served in a program other than that typically provided for individuals with similar educational needs.

b. Disability: An individual is appropriately served in a categorical program that does not typically serve the individual's disability.

c. Age span: The chronological age span of the individuals within the program exceeds six years in a self-contained special class or four years in a multicategorical special class with integration.

d. Maximum class size: When class size, including the size of a class served by a teacher employed less than full-time, exceeds those limits specified in subrules 41.84(1) and 41.84(2).

281—41.28 Reserved.

DIVISION V
CONFIDENTIALITY OF INFORMATION

281—41.29(256B,34CFR99,300) Definitions. As used in this division:

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of education records in 34 CFR Part 99, July 1, 1999.

"Personally identifiable information" means that information includes:

1. The name of the child, the child's parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child's social security number or student number; or
4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

281—41.30(256B,34CFR99,300) Information recorded and confidentiality maintained. For each individual all screening, assessment and evaluation results shall be recorded. Educational records shall be confidential and shall not be disclosed except pursuant to 34 CFR Parts 99 and 300, July 1, 1999. Each agency shall maintain records and reports in a current status. The parents of an eligible individual and the eligible individual shall be afforded, in accordance with rules 41.31(256B,34CFR99,300) and 41.33(256B,34CFR99,300), an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the individual; and the provision of FAPE to the individual.

281—41.31(256B,34CFR99,300) Access to educational records.

41.31(1) *Reviewing records.* Each agency shall permit the parents of an eligible individual and the eligible individual to inspect and review any education records relating to the individual that are collected, maintained, or used by the agency under these rules. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the individual or the provision of FAPE to the individual and in no case more than 45 calendar days. An agency may presume that the parent of an eligible individual has authority to inspect and review records relating to the individual unless the agency has been advised that the parent does not have the authority under Iowa Code chapters 597, 598, and 598A governing such matters as guardianship, separation, and divorce. When parental rights are transferred to an eligible individual as specified in rule 41.111(34CFR300) educational records shall be made available to parents if the eligible individual is determined to be a dependent student as defined in Section 152 of Title 26, the Internal Revenue Code of 1954. The right to inspect and review education records under these rules includes:

a. The right to a response from the agency to reasonable requests for explanations and interpretations of the records.

b. The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.

c. The right to have a representative of the parent inspect and review the records.

41.31(2) *Record of access.* Each agency shall keep a record of parties obtaining access to education records collected, maintained, or used under these rules (except access by parents and authorized employees, officers, and agents of the agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

41.31(3) *Records on more than one individual.* If any education record includes information on more than one individual, the parents of those individuals shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

41.31(4) *List of types and locations of information.* Each agency shall provide to parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

41.31(5) *Fees.* Each agency may charge a fee for copies of records that are made for parents under these rules if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. An agency may not charge a fee to search for or to retrieve information under these rules.

41.31(6) *Consent.*

a. Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of agencies collecting or using the information under these rules, subject to paragraph “b” of this subrule, or used for any purpose other than meeting a requirement of these rules.

b. An educational agency or institution subject to 34 CFR Part 99, July 1, 1999, may not release information from education records to agencies without parental consent unless authorized to do so under 34 CFR Part 99, July 1, 1999.

41.31(7) *Safeguards.*

a. Each agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b. One official at each agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

c. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under these rules and 34 CFR Part 99, July 1, 1999.

d. Each agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

281—41.32 Reserved.

281—41.33(256B,34CFR99,300) Amendment of educational records. A parent who believes that information in the education records collected, maintained or used under these rules is inaccurate or misleading or violates the privacy rights of the individual may request the agency that maintains the information to amend the information. The agency shall decide whether to amend the information in accord with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accord with the request, it shall inform the parent of the refusal, and advise the parent of the right to a hearing under 41.33(1).

41.33(1) Opportunity for a hearing. The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy rights of the individual.

41.33(2) Hearing procedure. A hearing held under 41.33(1) must be conducted according to the procedures under 34 CFR §99.22, July 1, 1999.

41.33(3) Result of hearing. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the individual, it shall amend the information accordingly and so inform the parent in writing. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy rights of the individual, it shall inform the parent of the right to place in the records it maintains on the individual a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. Any explanation placed in the records of the individual under this rule must:

a. Be maintained by the agency as part of the records of the individual as long as the record or contested portion is maintained by the agency; and

b. If the records of the individual or the contested portion is disclosed by the agency to any party, the explanation must be disclosed to the party.

281—41.34 Reserved.

281—41.35(256B,34CFR76,99,300) Destruction of information. The agency shall inform parents when personally identifiable information collected, maintained or used under these rules is no longer needed to provide educational services to the eligible individual. The information must be destroyed at the request of the parents. Agencies are required to retain records for three years after an individual is determined to be no longer eligible for special education. Personally identifiable information can be removed from those records less than three years old when the parents request destruction of records. A permanent record of the individual's name, address, and telephone number, the individual's grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation. When parents request destruction of information the agency shall inform parents that the records may be needed by the individual or the parents for social security benefits or other purposes.

281—41.36 Reserved.

DIVISION VI
LEAST RESTRICTIVE ENVIRONMENT

281—41.37(256B,34CFR300) General.

41.37(1) *General education environment.* The general education environment includes, but is not limited to, the classes, classrooms, services, and nonacademic and extracurricular services and activities made available by an agency to all students. For preschool children who require special education, the general education environment is the environment where appropriate activities, occur for children of similar age without disabilities.

41.37(2) *Documentation.* Each agency shall ensure and maintain adequate documentation:

a. That to the maximum extent appropriate, eligible individuals, including eligible individuals in public or private institutions or other care facilities, are educated with individuals who are nondisabled.

b. That special classes, separate schooling or other removal of eligible individuals from the general education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever possible, hindrances to learning and to the normal functioning of eligible individuals within the general school environment shall be overcome by the provision of special aids and services rather than by separate programs for those in need of special education.

281—41.38(256B,34CFR300) Continuum of services. Each agency shall ensure that a continuum of services is available to meet the needs of eligible individuals for special education and related services. The continuum of services shall include services listed in division IX of these rules.

281—41.39(256B,34CFR300) Services. Each agency shall ensure that:

41.39(1) *Annual determination.* The services for each eligible individual are determined at least annually; are based on the individual's IEP; and are provided as close as possible to the individual's home.

41.39(2) *Alternative placements.* The various services included in division IX are available to the extent necessary to implement the IEP for each eligible individual.

41.39(3) *Location.* Unless the IEP of an eligible individual requires some other arrangement, the individual is educated in the school that the individual would attend if nondisabled. IEP teams are required to consider the questions on LRE presented in subrule 41.67(6).

41.39(4) *Harmful effect.* In selecting the LRE, consideration is given to any potential harmful effect on the eligible individual or on the quality of services that the individual needs.

41.39(5) *Removal from general education environment.* An eligible individual is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

281—41.40(256B,34CFR300) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities, each agency shall ensure that each eligible individual participates with nondisabled individuals in those services and activities to the maximum extent appropriate to the needs of that individual. Those services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the agency, referrals to agencies which provide assistance to persons with disabilities, and employment of students, including both employment by the agency and assistance in making outside employment available.

281—41.41(256B,34CFR300) Individuals in public or private institutions. The department, on behalf of LEAs and AEAs, shall make arrangements with public and private institutions as may be necessary to ensure that this division is effectively implemented.

281—41.42(256B) Special schools. When an eligible individual's special education is provided in a special school, the individual's IEP shall include specific answers to the following questions:

41.42(1) Reasons. What are the reasons that the eligible individual cannot be provided an educational program in an integrated school setting?

41.42(2) Support needed. What supplementary aids and services are needed to support the eligible individual in the special education program?

41.42(3) Integrated setting. Why can't these aids and services be provided in an integrated setting?

41.42(4) Continuum of services available. What is the continuum of services available for the eligible individual?

281—41.43(256B,34CFR300) Technical assistance and training activities. The department shall carry out activities to ensure that teachers and administrators in all agencies are fully informed about their responsibilities for implementing rule 41.37(256B,34CFR300) and are provided with technical assistance and training necessary to assist them in this effort.

281—41.44(256B,34CFR300) Monitoring activities. The department shall carry out activities to ensure that rule 41.37(256B,34CFR300) is implemented by each public agency (state-operated program, AEA, and LEA). If there is evidence that an agency makes placements that are inconsistent with rule 41.37(256B,34CFR300), the department shall review the agency's justification for its actions and assist the agency in planning and implementing any necessary corrective action. The department shall take action consistent with rule 41.135(256B,273,282) if an agency fails to implement corrective actions.

281—41.45 and 41.46 Reserved.

DIVISION VII
IDENTIFICATION

281—41.47(256B,34CFR300) Identification of eligible individuals.

41.47(1) Definition. As used in this division, identification has two purposes: (1) to identify those individuals who require special education and (2) to identify individuals who need general education interventions as described in subrule 41.48(2).

41.47(2) Procedures. Each AEA, in conjunction with each constituent LEA, shall establish and implement ongoing identification and evaluation procedures to ensure early identification of and appropriate special education for eligible individuals of all ages, including individuals in all public and private agencies and institutions within that jurisdiction, as specified in rule 41.1(256B,34CFR300,303) of these rules. Each AEA shall have written procedures for the identification process.

41.47(3) Systematic problem solving process. When used by an AEA in its identification process, systematic problem solving means a set of procedures that is used to examine the nature and severity of an educationally related problem. These procedures primarily focus on variables related to developing effective educationally related interventions. Active parent participation is an integral aspect of the process and is solicited throughout. At a minimum, the process includes:

a. Description of problem. The presenting problem or behavior of concern is described in objective, measurable terms that focus on alterable characteristics of the individual and the environment. The individual and environment are examined through systematic data collection. The presenting problem or behaviors of concern are defined in a problem statement that describes the degree of discrepancy between the demands of the educational setting and the individual's performance.

b. Data collection and problem analysis. A systematic, data-based process for examining all that is known about the presenting problem or behaviors of concern is used to identify interventions that have a high likelihood of success. Data collected on the presenting problem or behaviors of concern are used to plan and monitor interventions. Data collected are relevant to the presenting problem or behaviors of concern and are collected in multiple settings using multiple sources of information and multiple data collection methods. Data collection procedures are individually tailored, valid, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.

c. Intervention design and implementation. Interventions are designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions. The interventions are described in an intervention plan that includes goals and strategies, a progress monitoring plan, a decision-making plan for summarizing and analyzing progress monitoring data, and responsible parties. Interventions are implemented as developed and modified on the basis of objective data and with the agreement of the responsible parties.

d. Progress monitoring. Systematic progress monitoring is conducted which includes regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.

e. Evaluation of intervention effects. The effectiveness of interventions is evaluated through a systematic procedure in which patterns of individual performance are analyzed and summarized. Decisions regarding the effectiveness of interventions focus on comparisons with initial levels of performance.

281—41.48(256B,34CFR300) Identification process. Each AEA shall develop and use an identification process that, at a minimum, includes the following activities and procedures. The AEA shall maintain adequate records of the results of the identification process.

41.48(1) Interactions. The identification process shall include interactions with the individual, the individual's parents, school personnel, and others having specific responsibilities for or knowledge of the individual. Active parent participation is solicited throughout the process. Parents are communicated with directly and are encouraged to participate at all decision points.

41.48(2) General education interventions. Each LEA, in conjunction with the AEA, shall attempt to resolve the presenting problem or behaviors of concern in the general education environment prior to conducting a full and individual evaluation. In circumstances when the development and implementation of general education interventions are not appropriate to the needs of the individual, the IEP team as described in subrule 41.62(1) and, as appropriate, other qualified professionals, may determine that a full and individual initial evaluation shall be conducted. Documentation of the rationale for such action shall be included in the individual's educational record. The parent of a child receiving general education interventions may request that the agency conduct a full and individual initial evaluation at any time during the implementation of such interventions.

a. Each LEA shall provide general notice to parents on an annual basis about the provision of general education interventions that occur as a part of the agency's general program and that may occur at any time throughout the school year.

b. General education interventions shall include teacher consultation with special education support and instructional personnel working collaboratively to improve an individual's educational performance. The activities shall be documented and shall include measurable and goal-directed attempts to resolve the presenting problem or behaviors of concern, communication with parents, collection of data related to the presenting problem or behaviors of concern, intervention design and implementation, and systematic progress monitoring to measure the effects of interventions.

c. If the referring problem or behaviors of concern are shown to be resistant to general education interventions or if interventions are demonstrated to be effective but require continued and substantial effort that may include the provision of special education and related services, the agency shall then conduct a full and individual initial evaluation.

41.48(3) *Full and individual initial evaluation.* An initial evaluation of the individual's educational needs shall be completed before any action is taken with respect to the initial provision of special education and related services. Written parental consent as required in these rules shall be obtained prior to conducting the evaluation. The purpose of the evaluation is to determine the educational interventions that are required to resolve the presenting problem, behaviors of concern, or suspected disability, including whether the educational interventions are special education. An evaluation shall include:

- a. An objective definition of the presenting problem, behaviors of concern, or suspected disability.
- b. Analysis of existing information about the individual, as described in paragraph 41.48(4) "a."
- c. Identification of the individual's strengths or areas of competence relevant to the presenting problem, behaviors of concern, or suspected disability.
- d. Collection of additional information needed to design interventions intended to resolve the presenting problem, behaviors of concern, or suspected disability, including, if appropriate, assessment or evaluation of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, adaptive behavior and motor abilities.

41.48(4) *Determination of needed evaluation data.* As part of a full and individual initial evaluation and as part of any reevaluation described in rule 41.77(256B, 34CFR300), the IEP team as described in subrule 41.62(1) and, as appropriate, other qualified professionals, shall:

- a. Review existing evaluation data on the individual including evaluations and information provided by the parents of the individual, current classroom-based assessments and observations, observations by teachers and related services providers and the results of general education interventions.
- b. On the basis of the review and input from the individual's parents, identify what additional data, if any, are needed to determine:

- (1) Whether the individual has a disability or, in case of a reevaluation, whether the individual continues to have a disability.
- (2) The present levels of performance and educational needs of the individual.
- (3) Whether the individual needs special education and related services or, in the case of a reevaluation, whether the individual continues to need special education and related services.
- (4) Whether any additions or modifications to the special education and related services are needed to enable the individual to meet the measurable annual goals set out in the IEP of the individual and to participate, as appropriate, in the general curriculum or, in the case of preschool children, appropriate activities.

41.48(5) *Conduct of review.* The group of individuals described in subrule 41.48(4) may conduct its review without a meeting.

41.48(6) *Need for additional data.* The group as described in subrule 41.62(1) shall administer the tests and other evaluation materials, and use assessment tools and strategies as may be needed to produce the data identified under subrules 41.48(3) and 41.48(4).

41.48(7) *Additional data not needed.* If the group as described in subrule 41.62(1) determines that no additional data are needed to determine whether the individual continues to have a disability, the agency shall notify the individual's parents of the team's determination and the reasons for it, and of the right of the parents to request an assessment to determine whether, for purposes of services described in these rules the individual continues to have a disability. The agency is not required to conduct this assessment unless requested to do so by the individual's parents.

281—41.49(256B,34CFR300) Assessment procedures, tests, and other evaluation materials.

The assessment procedures, tests and other evaluation materials used in the identification process shall be consistent with the following:

41.49(1) *Materials.* The tests and other evaluation materials:

a. Are provided and administered in the individual's native language or other mode of communication, unless it is clearly not feasible to do so. Materials and procedures used to assess an individual with limited English proficiency are selected and administered to ensure that they measure the extent to which the individual has a disability and needs special education, rather than measuring the individual's English language skills.

b. Have been validated for the specific purpose for which they are used.

c. Are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

d. Are technically sound and assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

41.49(2) *Tailored tests and materials.* The tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

41.49(3) *Impaired sensory, manual or speaking skills.* The tests and other evaluation materials are selected and administered so as best to ensure that if a procedure or test is administered to an individual with impaired sensory, manual, or speaking skills, the test results accurately reflect the individual's aptitude or achievement level or whatever other factors the procedure or test purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (unless those skills are the factors that the procedure or test purports to measure).

41.49(4) *Nondiscriminatory.* The tests and other evaluation materials are selected and administered so as not to be racially or culturally discriminatory.

41.49(5) *Tools and strategies.* The assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of the individual. A variety of assessment tools and strategies are used to gather relevant functional and developmental information about the individual, including information provided by the parent, and information related to enabling the individual to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the individual is an eligible individual and in determining the content of the IEP.

41.49(6) *No single procedure.* No single procedure is used as the sole criterion for determining whether the individual is an eligible individual and for determining an appropriate educational program for the individual.

281—41.50(256B,34CFR300) Determining eligibility and need for service. Upon completing the full and individual initial evaluation, the IEP team and other qualified professionals as appropriate shall determine whether the individual is an individual with a disability as defined in division II and whether the educational interventions that the individual requires constitute the provision of special education and related services as defined in division II and described in division IX.

41.50(1) *Considerations.* In making this determination, the IEP team shall:

a. Draw upon information from a variety of sources including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.

b. Ensure that information obtained from all evaluation procedures and sources is documented and carefully considered.

c. Ensure that the decision considers least restrictive environment and is made in conformity with division VI.

41.50(2) *Factors.* An individual shall not be determined to be an eligible individual if the determinant factor for the decision is a lack of instruction in reading or math, or limited English proficiency.

41.50(3) Reports and documentation. A copy of the evaluation report and the documentation of determination of eligibility shall be provided to the parent.

41.50(4) IEP requirement. If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with division VIII.

41.50(5) Placement decision. In determining the educational placement of an eligible individual, each public agency shall ensure that the placement decision is made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The placement decision shall be made in conformity with least restrictive environment provisions described in division VI.

281—41.51(256B) Dissenting opinions. Each AEA shall have written procedures for the filing of dissenting opinions by educational personnel who do not agree with the team's conclusions or with the recommended special education and related services for an individual. Such procedures shall include the receipt and review of the dissenting opinion by the director and a response from the director within ten calendar days of the filing date of the dissenting opinion. No disciplinary sanctions may be imposed against authors of dissenting opinions for comments made in good faith. Parents who do not agree with the team's conclusions or with the recommended special education and related services for an individual may file concerns through the procedures described in rules 41.105(256B,34CFR300), 41.106(256B,34CFR300), 41.107(256B,34CFR300), and division XI.

281—41.52(256B) Director's certification. Based upon the decision of the IEP team, the director shall certify the individual's entitlement for special education. Individuals determined to have entitlement for special education shall have an IEP developed prior to the provision of special education and related services. A confidential record, subject to audit by the department, registering the name and required special education and related service of each individual requiring special education, shall be maintained by the AEA and provision made for its periodic revision.

281—41.53(256B) Eligibility beyond the age of 21. An agency may continue the special education and related services of an eligible individual beyond the individual's twenty-first birthday if the person had an accident or prolonged illness that resulted in delays in the initiation of or interruption in that individual's special education. The agency must request approval from the department in accord with Iowa Code section 256B.8.

281—41.54(256B,34CFR300) Independent educational evaluation. A parent has a right to an independent educational evaluation as described in rule 41.109(256B,34CFR300). If a parent obtains an independent educational evaluation at public or private expense and the evaluation meets agency criteria, the results of the evaluation must be considered by the agency in any decision made with respect to the provision of FAPE to the individual and may be presented as evidence at a hearing regarding the individual.

281—41.55 Reserved.

281—41.56(256B,34CFR300) Evaluating individuals with learning disabilities. Rescinded IAB 4/26/06, effective 5/31/06.

281—41.57 and 41.58 Reserved.

DIVISION VIII
IEP

281—41.59(256B,34CFR300) Definitions. As used in this division:

“*IEP team*” includes members specified in rule 41.62(256B,34CFR300).

“*Participating agency*” means a state or local agency, other than the public agency responsible for an individual’s education, that is financially and legally responsible for providing transition services to the individual.

281—41.60(256B,34CFR300) Effective date. At the beginning of each school year, each agency shall have in effect an IEP for every eligible individual from that agency. An IEP must be in effect before special education and related services are provided to an eligible individual and be implemented as soon as possible following the meetings under rule 41.61(256B,34CFR300). It is expected that the IEP of an eligible individual will be implemented immediately following the meetings under rule 41.61(256B, 34CFR300). Each public agency shall ensure that the eligible individual's IEP is accessible to each general education teacher, special education teacher, support service provider, and other service provider who is responsible for its implementation; and each teacher and provider is informed of the teacher or provider's specific responsibilities related to implementing the eligible individual's IEP and the specific accommodations, modifications, and supports that must be provided for the eligible individual in accordance with the IEP. Exceptions to this would be when the meetings occur during the summer or a vacation period, unless the child requires services during that period, or where there are circumstances that require a short delay (e.g., working out transportation arrangements). However, there can be no undue delay in providing special education and related services to the eligible individual.

281—41.61(256B,34CFR300) Meetings.

41.61(1) General. Each agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEP of an eligible individual.

41.61(2) Timeline. Each agency shall ensure that within a reasonable period of time following the agency's receipt of parent consent to an initial evaluation of an eligible individual, the eligible individual is evaluated and, if determined eligible under these rules, special education and support services are made available to the eligible individual in accordance with an IEP. A meeting to develop an IEP for an eligible individual must be held within 30 calendar days of a determination that the individual needs special education and related services.

41.61(3) Review and revision of IEP. Each agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved and revises the IEP as appropriate to address:

- a. Any lack of expected progress toward the annual goals described in rule 41.67(256B,34CFR300), and in the general curriculum, if appropriate;
- b. The results of any reevaluation conducted;
- c. Information about the child provided to, or by, the parents;
- d. The child's anticipated needs; or
- e. Other matters.

281—41.62(256B,34CFR300) Participants in meetings.

41.62(1) General. The agency shall ensure that each IEP meeting includes the following participants:

- a. The parents of the eligible individual.
- b. At least one general education teacher of the eligible individual (if the eligible individual is, or may be, participating in the general education environment). As a member of the IEP team, the general education teacher of an eligible individual shall, to the extent appropriate, participate in the development, review, and revision of the eligible individual's IEP, including assisting in the determination of appropriate positive behavioral interventions and strategies for the eligible individual and determination of supplementary aids and services, program modifications, or supports for school personnel that will be provided for the eligible individual consistent with paragraph 41.67(1) "c."
- c. At least one special education teacher or, if appropriate, at least one special education provider of the eligible individual.

d. A representative of the LEA who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of an eligible individual and is knowledgeable about the general curriculum and the availability of resources of the LEA. The LEA may designate another public agency member of the IEP team to also serve as the agency representative, if the criteria in this paragraph are satisfied.

e. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs “a” through “f” of this subrule.

f. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the eligible individual, including related services personnel as appropriate. The determination of the knowledge or special expertise of any individual described in this paragraph shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

g. If appropriate, the eligible individual.

41.62(2) *Transition services participants.*

a. If a purpose of the IEP meeting is the consideration of transition services for an eligible individual, the agency shall invite the individual and a representative of any other agency that is likely to be responsible for providing or paying for transition services.

b. If the individual does not attend, the agency shall take other steps to ensure that the individual’s preferences and interests are considered.

c. If an agency invited to send a representative to a meeting does not do so, the agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

281—41.63 Reserved.

281—41.64(256B,34CFR300) Parent participation.

41.64(1) *Parent participation in IEP meetings.* Each agency shall take steps to ensure that one or both of the parents of the eligible individual are present at each IEP meeting or are afforded the opportunity to participate, including:

a. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend.

b. Scheduling the meeting at a mutually agreed-on time and place.

c. Notifying the parents of the purpose, time, and location of the meeting and who (name and position) will be in attendance and informing the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the eligible individual.

d. For an eligible individual beginning at the age of 14, or younger if appropriate, the notice shall indicate that a purpose of the meeting is the development of a statement of the transition service needs of the eligible individual required in subparagraph 41.67(2) “a”(1) and indicate that the agency will invite the eligible individual.

e. For an eligible individual beginning at the age of 16, or younger if appropriate, the notice must indicate:

- (1) A purpose of the meeting is the consideration of needed transition services.
- (2) That the agency will invite the eligible individual.
- (3) Any other agency that will be invited to send a representative.

41.64(2) *Documentation.* If neither parent can attend, the agency shall use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent in attendance if the agency is unable to convince the parents that they should attend. In this case the agency must have a record of its attempts to arrange a mutually agreed-on time and place such as:

- a.* Detailed records of telephone calls made or attempted and the results of those calls.
- b.* Copies of correspondence sent to the parents and any responses received.
- c.* Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- d.* The procedure used to notify parents (whether oral or written or both) is left to the discretion of the agency, but the agency shall keep a record of its efforts to contact parents.

41.64(3) *Interpreters for parents.* The agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

41.64(4) *Copy of IEP to parents.* The public agency shall give the parent a copy of the child's IEP at no cost to the parent.

281—41.65 and 41.66 Reserved.

281—41.67(256B,34CFR300) Content of IEP.

41.67(1) General. Rescinded IAB 4/26/06, effective 5/31/06.

41.67(2) Transition services. Rescinded IAB 4/26/06, effective 5/31/06.

41.67(3) Transfer of rights. Rescinded IAB 4/26/06, effective 5/31/06.

41.67(4) Eligible individuals with disabilities convicted as adults and incarcerated in adult prisons. Rescinded IAB 4/26/06, effective 5/31/06.

41.67(5) Considerations in development of IEP. Rescinded IAB 4/26/06, effective 5/31/06.

41.67(6) LRE considerations. When developing an eligible individual's IEP, the IEP team shall consider the following questions regarding the provision of special education and related services:

a. What accommodations, modifications and adaptations does the individual require to be successful in a general education environment?

b. Why can't these accommodations, modifications and adaptations be provided within the general education environment?

c. What supports are needed to assist the teacher and other personnel in providing these accommodations, modifications and adaptations?

d. How will providing special education services and activities in the general education environment impact this individual?

e. How will providing special education services and activities in the general education environment impact other students?

281—41.68(256B,34CFR300) Support services only. An IEP that satisfies the requirements of rule 41.60(256B,34CFR300) to rule 41.67(256B,34CFR300) shall be developed for eligible individuals who require only special education support services. The special education support service specialist with knowledge in the area of need shall have primary responsibility for recommending the need for support service, the type or model of service to be provided, and the amount of service to be provided. However, the determination that an individual is eligible for special education shall meet the requirements of division VII. The special education support service provider shall attend the IEP meetings for the eligible individual being served.

281—41.69(34CFR303) Children birth to the age of three. A fully developed IFSP shall be considered to have met the requirements of an IEP for an eligible individual younger than the age of three.

281—41.70(256B,34CFR300) Related IEP requirements.

41.70(1) *Completed IEP.* It is not permissible for an agency to present a completed and finalized IEP to parents for their approval before there has been a full discussion with the parents regarding the eligible individual's need for special education and related services and the services the agency will provide to the individual. It would be appropriate for individual agency personnel to come prepared with evaluation findings, proposed statements of present levels of educational performance, and a recommendation regarding annual goals, milestones or short-term instructional objectives, and the kind of special education and related services to be provided. However, the agency must make it clear to the parents at the outset of the meeting that the services proposed by the individual are only recommendations for review and discussion with the parents.

41.70(2) *Consolidated IEP.* In instances in which an eligible individual must have both an IEP and an individualized service plan under another federal program, it is possible to develop a single, consolidated document if it contains all of the information required in an IEP and if all of the necessary parties participate in its development.

41.70(3) *Accountability.* Each agency shall provide special education and related services to an eligible individual in accordance with an IEP and make a good-faith effort to assist the eligible individual to achieve the goals and objectives or milestones listed in the IEP. These rules do not require that any agency, teacher, or other person be held accountable if an individual does not achieve the growth projected in the annual goals and milestones or objectives.

41.70(4) *Interim IEP.* An IEP must be in effect before special education and related services are provided to an eligible individual. This does not preclude the development of an interim IEP which meets all the requirements of rule 41.67(256B,34CFR300) when the IEP team determines that it is necessary to temporarily provide special education and related services to an eligible individual as part of the evaluation process, before the IEP is finalized, to aid in determining the appropriate services for the individual. An interim IEP may also be developed when an eligible individual moves from one LEA to another and a copy of the current IEP is not available, or either the LEA or the parent believes that the current IEP is not appropriate or that additional information is needed before a final decision can be made regarding the specific special education and related services that are needed. IEP teams cannot use interim IEPs to circumvent the requirements of this division or of division VII. It is essential that the temporary provision of service not become the final special education for the individual before the IEP is finalized. In order to ensure that this does not happen, IEP teams shall take the following actions:

a. Specific conditions and timelines. Develop an interim IEP for the individual that sets out the specific conditions and timelines for the temporary service. An interim IEP shall not be in place for more than 30 school days.

b. Parent agreement and involvement. Ensure that the parents agree to the interim service before it is carried out and that they are involved throughout the process of developing, reviewing, and revising the individual's IEP.

c. Completing evaluation and making judgments. Set a specific timeline for completing the evaluation and making judgments about the appropriate services for the individual.

d. Conducting meeting. Conduct an IEP meeting at the end of the trial period in order to finalize the individual's IEP.

41.70(5) *Agency responsible for transition services.*

a. If a participating agency, other than the LEA, fails to provide the transition services described in the IEP in accordance with subparagraph 41.67(2)“a”(2), the LEA shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the eligible individual set out in the IEP.

b. Nothing in these rules relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to eligible individuals who meet the eligibility criteria of that agency.

41.70(6) *Construction.* Nothing in these rules shall be construed to require the IEP team to include information under one component of an eligible individual's IEP that is already contained under another component of the individual's IEP.

281—41.71(256B,34CFR300) Discipline procedures. Rescinded IAB 4/26/06, effective 5/31/06.

281—41.72(256B,34CFR300) Manifestation determination. Rescinded IAB 4/26/06, effective 5/31/06.

281—41.73(256B,34CFR300) Appeal.

41.73(1) Parent appeal.

a. General.

(1) If the eligible individual's parent disagrees with a determination that the eligible individual's behavior was not a manifestation of the individual's disability or with any decision regarding placement under rules 41.71(256B,34CFR300) to 41.73(256B,34CFR300), the parent may request a hearing.

(2) The state shall arrange for an expedited hearing in any case described in this subrule if requested by a parent.

b. Review of decision.

(1) In reviewing a decision with respect to the manifestation determination, the administrative law judge shall determine whether the public agency has demonstrated that the eligible individual's behavior was not a manifestation of the individual's disability consistent with the requirement of paragraph 41.72(1) "d."

(2) In reviewing a decision under subparagraph 41.71(2) "a"(2) to place the eligible individual in an interim alternative educational setting, the administrative law judge shall apply the standards in subrule 41.71(3).

41.73(2) Placement during appeals.

a. General. If a parent requests a hearing regarding a disciplinary action described in subparagraph 41.71(2)“a”(2) or subrule 41.71(3) to challenge the interim alternative educational setting or the manifestation determination, the eligible individual shall remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period provided for in subparagraph 41.71(2)“a”(2) or subrule 41.71(3), whichever occurs first, unless the parent and the state or local educational agency agree otherwise.

b. Current placement. If an eligible individual is placed in an interim alternative educational setting pursuant to subparagraph 41.71(2)“a”(2) or subrule 41.71(3) and school personnel propose to change the eligible individual’s placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the individual shall remain in the current placement (the individual’s placement prior to the interim alternative educational setting), except as provided in paragraph “c” of this subrule.

c. Expedited hearing.

(1) If school personnel maintain that it is dangerous for the eligible individual to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the eligible individual may be placed in the alternative educational setting or in another appropriate placement ordered by the administrative law judge, the administrative law judge shall apply the standards in subrule 41.71(3).

(3) A placement ordered pursuant to subparagraph “c”(2) of this subrule may not be longer than 45 calendar days.

(4) The procedure in paragraph “c” of this subrule may be repeated as necessary.

41.73(3) *Protections for children not yet eligible for special education and related services.*

a. General. An individual who has not been determined to be eligible for special education under these rules and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in subrule 41.71(2) or subrule 41.71(3), may assert any of the protections provided for in these rules if the LEA had knowledge (as determined in accordance with paragraph “b” of this subrule) that the individual was an eligible individual before the behavior that precipitated the disciplinary action occurred.

b. Basis of knowledge. An LEA shall be deemed to have knowledge that an individual is an eligible individual if:

(1) The parent of the individual has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the individual is in need of special education and related services;

(2) The behavior or performance of the individual demonstrates the need for these services in accordance with division VII;

(3) The parent of the individual has requested an evaluation of the individual pursuant to division VII; or

(4) The teacher of the individual, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the individual to the director or to other personnel in accordance with the agency’s established child find or special education referral system of the agency.

c. Exception. A public agency would not be deemed to have knowledge under paragraph “b” of this subrule if, as a result of receiving the information specified in that paragraph, the agency either conducted an evaluation in accordance with division VII, and determined that the individual was not an eligible individual or determined that an evaluation was not necessary and provided notice to the individual’s parents of its determination consistent with rule 41.104(256B,34CFR300).

d. Conditions that apply if no basis of knowledge.

(1) General. If an LEA does not have knowledge that an individual is an eligible individual (in accordance with paragraphs “b” and “c” of this subrule) prior to taking disciplinary measures against the individual, the individual may be subjected to the same disciplinary measures as measures applied to individuals without disabilities who engaged in comparable behaviors consistent with subparagraph “d”(2) of this subrule.

(2) Limitations.

1. If a request is made for an evaluation of an individual during the time period in which the individual is subjected to disciplinary measures under subrule 41.71(2) or subrule 41.71(3), the evaluation shall be conducted in an expedited manner.

2. Until the evaluation is completed, the individual remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

3. If the individual is determined to be an eligible individual, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of these rules, including the requirements of rules 41.71(256B, 34CFR300) to 41.73(256B, 34CFR300).

41.73(4) Expedited due process hearings. Expedited due process hearings under rules 41.71(3) to 41.73(2) shall be conducted by an administrative law judge as described in rule 41.112(17A, 256B, 290).

a. The parent of an individual with a disability, a representative of an LEA or AEA, or the attorney representing any of these parties shall provide notice to the department requesting an expedited hearing. This notice shall be in written form and shall include the name of the individual; the address of the residence of the individual; the name of the school the individual is attending and a description of the nature of the problem of the individual relating to the proposed or refused initiation or change, including facts relating to the problem.

b. The director of education or designee shall, within three business days after the receipt of the appeal, notify the proper school officials and the student’s parents of the appeal. This notice may be done telephonically and confirmed in writing. School officials shall, within five business days after receipt of the notice, file with the department all records relevant to the decision appealed.

c. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original, if available. Any party has the right to object to the introduction of any evidence at the hearing that has not been disclosed to that party at least two business days before the hearing.

d. The presiding administrative law judge may limit the scope of evidence presented at an expedited due process hearing to information directly relevant to resolution of the issue or issues identified in the hearing request. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant. Any party dissatisfied by limitations imposed pursuant to this provision shall promptly notify the presiding administrative law judge of its objection and the reasons why the party believes additional evidence should be received.

e. The expedited due process hearing shall be held by telephone conference call unless otherwise specified by the presiding administrative law judge. The administrative law judge will determine the location of the parties and witnesses for telephone hearings. The convenience of the parties or witnesses, as well as the nature of the case, will be considered when location is chosen.

f. The administrative law judge may determine that there is a need to establish a specific time limitation for presentations from each party. Brief memoranda of law may be presented at the time of hearing but, unless ordered otherwise by the administrative law judge, these proceedings do not include the submission of written briefs following the hearing.

g. The parties to the appeal may request that the presiding officer issue an oral decision on the merits of the case at the conclusion of the hearing. Both parties must agree to the request for an oral decision. If the presiding officer agrees with this request the decision will be rendered orally followed by a written confirmation of the presiding officer's determination.

h. The final decision in these proceedings must be mailed to the parties within 45 calendar days of the public agency's receipt of the request for the hearing, without exceptions or extensions.

i. Decisions on expedited due process hearings are final as described in rule 41.124(17A,256B).

j. Restrictions on communications by the administrative law judge and parties are in accordance with rule 41.121(17A,256B).

k. The record requirements of rule 41.122(17A,256B) apply to expedited hearings, with the exception of parents being given the right to open the hearing to the public if the hearing is conducted telephonically.

41.73(5) *Referral to and action by law enforcement and judicial authorities.*

a. Nothing in these rules prohibits an agency from reporting a crime committed by an eligible individual to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by an eligible individual.

b. An agency reporting a crime committed by an eligible individual shall ensure that copies of the special education and disciplinary records of the eligible individual are transmitted for consideration by the appropriate authorities to whom it reports the crime.

c. An agency reporting a crime under this subrule may transmit copies of the eligible individual's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

281—41.74(34CFR300) Eligible individuals in nonpublic schools. To the extent consistent with the number and location of students enrolled in nonpublic schools, provision is made for the participation of nonpublic school students with disabilities in programs assisted by or carried out under 34 CFR Part 300, July 1, 1999, by providing them with special education and related services.

41.74(1) *Placed or referred by public agencies.*

a. Before a public agency places an eligible individual in, or refers an eligible individual to, a nonpublic school or facility, the agency shall initiate and conduct a meeting to develop an IEP for the individual in accordance with division VIII.

b. The agency shall ensure that a representative of the nonpublic school or facility attends the meeting. If the representative cannot attend, the agency shall use other methods to ensure participation by the nonpublic school or facility, including individual or conference telephone calls.

c. After an eligible individual enters a nonpublic school or facility, any meetings to review and revise the individual's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the public agency.

d. If the nonpublic school or facility initiates and conducts these meetings, the public agency shall ensure that the parents and an agency representative are involved in any decision about the individual's IEP and agree to any proposed changes in the program before those changes are implemented.

e. Even if a nonpublic school or facility implements an individual's IEP, responsibility for compliance with these rules remains with the public agency and the state.

41.74(2) *Placement of individuals by parents if FAPE is at issue.*

a. If an eligible individual has FAPE available and the parents choose to place the individual in a nonpublic school or facility, the public agency is not required by 34 CFR Part 300, July 1, 1999, to pay for the individual's education at the nonpublic school or facility. However, the public agency shall make services available to the individual as provided in rule 41.74(256B,34CFR300).

b. Disagreements between a parent and a public agency regarding the availability of a program appropriate for an eligible individual, and the question of financial responsibility, are subject to the due process procedures of division XI.

c. If the parents of an eligible individual, who previously received special education and related services under the authority of a public agency, enroll the child in a nonpublic preschool, elementary or secondary school without the consent of or referral by the public agency, a court or administrative law judge may require the agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and the nonpublic placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education provided by the department and LEAs.

d. The cost of reimbursement described in paragraph 41.74(3) "c" may be reduced or denied:

(1) If, at the most recent IEP meeting that the parents attended prior to removal of the eligible individual from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a nonpublic school at public expense; or at least ten business days (including any holidays that occur on a business day) prior to the removal of the eligible individual from the public school, the parents did not give written notice to the public agency of the information described in this rule.

(2) If, prior to the parents' removal of the individual from the public school, the public agency informed the parents, through the notice requirements described in rule 41.104(256B,34CFR300) of its intent to evaluate the individual (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the individual available for the evaluation, or upon a judicial finding of unreasonableness with respect to actions taken by the parents.

e. Notwithstanding the notice requirement in subparagraph "d"(1) of this subrule, the cost of reimbursement may not be reduced or denied for failure to provide the notice if:

- (1) The parent is illiterate and cannot write in English;
- (2) Compliance with subparagraph "d"(1) of this subrule would likely result in physical or serious emotional harm to the individual;
- (3) The school prevented the parent from providing the notice; or
- (4) The parents had not received notice of the notice requirement in subparagraph "d"(1) of this subrule.

281—41.75(256B,34CFR300,303) Transition from Part C to Part B. Each agency shall ensure a smooth transition for individuals receiving early intervention services through an IFSP under 20 U.S.C. Chapter 33, Part C to early childhood special education under 20 U.S.C. Chapter 33, Part B. A smooth transition shall include:

41.75(1) Families. A description of how the families will be included in planning for transition under 20 U.S.C. Chapter 33, Part B.

41.75(2) AEA personnel. The AEA shall:

a. Notify the appropriate LEA in which the child resides.
b. Convene, with the approval of the family, a planning conference among the family, the IFSP service coordinator, the LEA, AEA, and other appropriate providers at least 90 calendar days, and at the discretion of the parties, up to 6 months, before the child's third birthday to:

- (1) Discuss any Part B services the child may need.
- (2) Establish a transition plan.
- (3) Determine the need for a full and individual initial evaluation or reevaluation as described in division VII of these rules.
- (4) Convene the IEP team.
- (5) Review the child's program options for the period from the child's third birthday through the remainder of the school year.

41.75(3) LEA personnel. The LEA shall:

- a.* Participate in a planning conference among the family, IFSP service coordinator, LEA, AEA, and other appropriate providers.
- b.* Discuss any Part B services the child may need.
- c.* Review the child's program options for the period from the child's third birthday through the remainder of the school year.

41.75(4) IEP team. The IEP team as described in 41.62(256B,34CFR300) shall:

- a.* Determine whether the child is an eligible individual as described in rules 41.48(256B,34CFR300) and 41.77(256B,34CFR300).
- b.* Implement an IEP by the child's third birthday for individuals who are eligible or continue to be eligible for early childhood special education.

281—41.76 Reserved.

281—41.77(256B,34CFR300) Reevaluation. Rescinded IAB 4/26/06, effective 5/31/06.

281—41.78(256B) Trial placement. Prior to transfer from a special education program or service, an eligible individual may be provided a trial placement in the general education setting of not more than 45 school days. A trial placement plan shall be incorporated into this individual's IEP.

281—41.79 Reserved.

281—41.80(256B,34CFR300) Extended school year services. Each public agency shall ensure that extended school year services are made available as necessary to provide FAPE.

41.80(1) Definition. Extended school year services means special education and related services that are provided to an eligible individual beyond the normal school year of the public agency in accordance with the eligible individual's IEP at no cost to the parents of the eligible individual and that meet the standards of the department.

41.80(2) Basis for determining need. Extended school year services must be provided only if an eligible individual's IEP team determines, on an individual basis, in accordance with rules 41.60(256B,34CFR300) to 41.70(256B,34CFR300) that the services are necessary for the provision of FAPE to the eligible individual. In implementing the requirements of this rule a public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

281—41.81 Reserved.

DIVISION IX
SERVICES

281—41.82(256B,34CFR300) General.

41.82(1) Individually designed. The special education and related services provided to an eligible individual shall be individually determined and based on the specific educational needs of the individual.

41.82(2) Least restrictive environment. To the maximum extent appropriate to the needs of the eligible individual, special education and related services shall be designed and delivered so as to maintain the individual in the general education environment and as detailed in division VI of these rules.

41.82(3) Based on IEP. The special education and related services provided an eligible individual shall be consistent with the services described in the individual's IEP.

41.82(4) Combination of services. A combination of services may be necessary to address the educational needs of an eligible individual. In such cases, the personnel providing the various services shall coordinate activities and efforts, and the services shall be described in one IEP.

281—41.83(256B,34CFR300) Continuum of services. Each LEA, in conjunction with the AEA, shall ensure that a continuum of services from birth to the maximum age provided by the Iowa Code are available or shall be made available to meet the educational needs of eligible individuals.

281—41.84(256B,273,34CFR300) Instructional services. Instructional services are the specially designed instruction and accommodations provided by special education instructional personnel to eligible individuals. These services are ordinarily provided by the LEA but, in limited circumstances, may be provided by another LEA, the AEA or another recognized agency through contractual agreement. An agency may choose to use the program models and related requirements described in subrule 41.84(1) for delivering instructional services, or the development process described in subrule 41.84(2) for creating a delivery system of instructional services.

41.84(1) Program models. An agency may elect to use the following program models and delivery methods in providing instructional services to eligible individuals.

a. The following program models are for school-aged individuals.

(1) "Resource teaching program" is an educational program for individuals who require specially designed instruction in specific skill areas on a part-time basis. Individuals enrolled in this type of program require specially designed instruction for a minimal average of 30 minutes per day. This program shall include provisions for ongoing consultation and demonstration with the general education teachers of the individuals served. This program may be operated on a multicategorical basis. The teacher of a resource teaching program shall serve in no more than two attendance centers. The maximum class size for this program is 18 students at both the elementary and secondary levels with the exception of programs for individuals with hearing impairment or visual impairment which shall be 15 students at both levels. (Reference Iowa Code section 256B.9(1)"b")

(2) "Special class with integration" is an educational program for individuals who can benefit from participation in one or more academic offerings of the general education program and who require specially designed instruction for a significant portion of the school day. The program shall include provisions for ongoing consultation and demonstration with the general education teachers. To be operated on a multicategorical basis, the following conditions shall be considered: support services provided to the program including appropriately authorized consultant services; the need for and availability of paraprofessionals to assist the teacher; the individuals served have comparable educational needs; and the chronological age range does not exceed four years. The maximum class size for this program is 12 students at the elementary level and 15 students at the secondary level with the exception of programs for individuals with hearing impairment or visual impairment which shall be 10 students at both levels. (Reference Iowa Code section 256B.9(1)"b")

(3) "Self-contained special class with little integration" is an educational program for individuals who require specially designed instruction for most of their educational program. The maximum class size for this program is 8 students at the elementary level and 10 students at the secondary level. The maximum class size of this program at the secondary level may be 15 students if an AEA work experience coordinator coordinates and supervises on- and off-campus work experiences for those individuals requiring specially designed career exploration and vocational preparation. (Reference Iowa Code section 256B.9(1)"c")

(4) "Self-contained special class" is an educational program for individuals whose total instructional program must be specially designed and provided by a special education teacher. The students served by this program shall be provided opportunities to participate in activities with nondisabled individuals. The staff-to-student ratio for this program shall be one teacher and one paraprofessional for each five students. When students numbering six through nine are added, an additional paraprofessional must be employed. When the tenth student is added, another special education teacher must be employed. The chronological age range of students served in this program shall not exceed six years. (Reference Iowa Code section 256B.9(1)"d")

b. Environments for delivery of ECSE instructional services include:

(1) "Early childhood settings" designed primarily for children without disabilities who are below the age of six may be used to provide special education instructional services. In such circumstances the early childhood settings may be publicly funded or fee-based community programs. The AEA or LEA responsible for providing special education may contract with a fee-based community program to provide special education instruction. Instructional services are provided and monitored on site by early childhood special education personnel.

(2) Special education instructional services may be provided through a combination of "part-time early childhood and part-time early childhood special education settings." These settings provide special education instruction in a general education environment designed primarily for children without disabilities who are below the age of six in addition to an ECSE classroom environment designed primarily for children with disabilities. The IEP shall be monitored in both settings by ECSE personnel.

(3) "Reverse integration settings" refer to the provision of special education instruction in an environment designed primarily for children with disabilities who are not age eligible for kindergarten. In such circumstances, at least 50 percent of the children enrolled in the ECSE setting do not have disabilities.

(4) "Early childhood special education settings" are designed primarily for children with disabilities who are below the age of six. These programs are served by one ECSE teacher and one paraprofessional and may be operated on a multicategorical basis. These settings serve up to eight children unless the setting is designed for individuals with severe disabilities in which case the maximum class size is five children.

(5) "Home instruction" refers to the provision of special education instruction in the home for children aged three to six.

c. In applying the maximum class sizes specified in this subrule, the following conditions shall be considered:

(1) Maximum class size limits are predicated upon one teacher to the specified class size. When a teacher is employed less than full-time for a resource teaching program or ECSE setting, the maximum class size shall be proportionate to the full-time equivalency of the teacher employed.

(2) If, in unique circumstances, it is necessary to exceed the class size maximum for a special class with integration, the chronological age range shall not exceed six years or four years for a class operated on a multicategorical basis.

(3) When circumstances necessitate placing an eligible individual in a less restrictive program for receipt of the recommended program, that individual shall count as two individuals in computing the class size.

41.84(2) LEA-developed delivery system. An agency may elect to use the following development process for creating a system for delivering instructional services.

a. The delivery system shall meet the continuum of services requirements of rules 41.38(256B,34CFR300) and 41.83(256B,34CFR300) and shall provide for the following:

(1) The provision of accommodations and modifications to the general education environment and program, including modification and adaptation of curriculum, instructional techniques and strategies, and instructional materials.

(2) The provision of specially designed instruction and related activities through cooperative efforts of special education teachers and general education teachers in the general education classroom.

(3) The provision of specially designed instruction on a limited basis by a special education teacher in the general classroom or in an environment other than the general classroom, including consultation with general education teachers.

(4) The provision of specially designed instruction to eligible individuals with similar special education instructional needs organized according to the type of curriculum and instruction to be provided, and the severity of the educational needs of the eligible individuals served.

b. The delivery system shall be described in writing and shall include the following components:

(1) A description of how services will be organized and how services will be provided to eligible individuals consistent with the requirements of divisions VI and IX of these rules, and the provisions described in paragraph 41.84(2)"a."

(2) A description of how the caseloads of special education teachers will be determined and regularly monitored to ensure that the IEPs of eligible individuals are able to be fully implemented.

(3) A description of the procedures a special education teacher can use to resolve concerns about caseload. The procedures shall specify timelines for the resolution of a concern and identify the person to whom a teacher reports a concern. The procedures shall also identify the person or persons who are responsible for reviewing a concern and rendering a decision, including the specification of any corrective actions.

(4) A description of the process used to develop the system, including the composition of the group responsible for its development.

(5) A description of the process that will be used to evaluate the effectiveness of the system.

c. The following procedures shall be followed by the agency:

(1) Before initiating the development of the delivery system, the LEA board shall approve such action and the LEA personnel and parents who will participate in the development of the alternative.

(2) The delivery system shall be developed by a group of individuals that includes parents of eligible individuals, special education and general education teachers, administrators, and at least one AEA representative. The AEA representative is selected by the director.

(3) The director shall verify that the delivery system is in compliance with these rules prior to LEA board adoption.

(4) Prior to presenting the delivery system to the LEA board for adoption, the group responsible for its development shall provide an opportunity for comment on the system by the general public. In presenting the delivery system to the LEA board for adoption, the group shall describe the comment received from the general public and how the comment was considered.

(5) The LEA board shall approve the system prior to implementation.

d. The procedure presented in subrule 41.132(9) shall be followed in applying the weighting plan for special education instructional funds described in Iowa Code section 256B.9 to any delivery system developed under these provisions.

281—41.85 Reserved.

281—41.86(256B,34CFR300) Support services. Support services are the specially designed instruction and activities which augment, supplement or support the educational program of eligible individuals. These services include special education consultant services, educational strategist services, audiology, occupational therapy, physical therapy, school psychology, school social work services, special education nursing services, speech-language services, and work experience services provided by the support personnel described in subrule 41.9(3). Support services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency.

281—41.87 Reserved.

281—41.88(256B,34CFR300) Itinerant services. Special education may be provided to eligible individuals on an itinerant basis. These services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the AEA board, by the LEA or another qualified agency.

41.88(1) School based. Special education may be provided on an itinerant basis whenever the number, age, severity, or location of eligible individuals to be served does not justify the provision of professional personnel on a full-time basis to an attendance center.

41.88(2) Home service or hospital service. Special education shall be provided to eligible individuals whose condition precludes their participation in the general and special education provided in schools or related facilities. The provision of services in a home or hospital setting shall satisfy the following:

a. The service and the location of the service shall be specified in the individual's IEP.

b. The status of these individuals shall be periodically reviewed to substantiate the continuing need for and the appropriateness of the service.

c. Procedural safeguards shall be afforded to individuals receiving special education through itinerant services in a home or hospital setting. A need for itinerant services in a home or hospital setting must be determined at a meeting to develop or revise the individual's IEP, and parents must give consent or be given notice, as appropriate.

281—41.89 Reserved.

281—41.90(256B,34CFR300) Supplementary aids and services. Supplementary aids and services shall be provided in order for an eligible individual to be served in the general education classroom environment or other education-related settings to enable the individual to be educated with nondisabled individuals to the maximum extent appropriate. These may include intensive short-term specially designed instruction; educational interpreters; readers for individuals with visual impairments; special education assistants; special education assistants for individuals with physical disabilities for assistance in and about school, and for transportation; materials; and specialized or modified instructionally related equipment for use in the school.

281—41.91 Reserved.

281—41.92(256B,34CFR300) Assistive technology services. Agencies shall ensure that assistive technology devices or assistive technology services, or both, as defined in rule 41.5(256B,34CFR300) and described in this rule, are made available to an eligible individual if required as part of the individual's special education and as specified in the IEP. Assistive technology services include:

41.92(1) *Functional evaluation.* The evaluation of the needs of an eligible individual, including a functional evaluation of this individual in the individual's customary environment.

41.92(2) *Acquisition.* Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices.

41.92(3) *Selections, adaptations and replacement.* Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.

41.92(4) *Coordination and planning.* Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.

41.92(5) *Training or technical assistance.* Training or technical assistance for an eligible individual or, when appropriate, the family of this individual; and for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of eligible individuals.

281—41.93 Reserved.

281—41.94(256B,34CFR300) Related services. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist an eligible individual to benefit from special education. The need for related services shall be individually determined and documented in each eligible individual's IEP. Payment for related services is an appropriate expenditure of special education funds for eligible individuals.

281—41.95(256B,34CFR300) Orientation and mobility services. Orientation and mobility services are services provided to blind or visually impaired eligible individuals by qualified personnel to enable those individuals to attain systematic orientation to and safe movement within their environments in school, home, and community. The services include teaching the individuals as appropriate: spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street); to use the long cane, to supplement visual travel skills or as a tool for safely negotiating the environment for individuals with no available travel vision; to understand and use remaining vision and distance, low vision aids, and other concepts, techniques, and tools.

281—41.96(256B) Special health services. Some eligible individuals need special health services to participate in an educational program. These individuals shall receive special health services concomitantly with their educational program.

41.96(1) Definitions. The following definitions shall be used in this division, unless the context otherwise requires:

“Assignment and delegation” occurs when licensed health personnel, in collaboration with the education team, determine the special health services to be provided and the qualifications of individuals performing the health services. Primary consideration is given to the recommendation of the licensed health personnel. Each designation considers the individual’s special health service. The rationale for the designation is documented. If the designation decision of the team differs from the licensed health professional, team members may file a dissenting opinion.

“Coadministration” is the eligible individual’s participation in the planning, management and implementation of the individual’s special health service and demonstration of proficiency to licensed health personnel.

“Educational program” includes all school curricular programs and activities both on and off school grounds.

“Education team” may include the eligible individual, this individual’s parent, administrator, teacher, licensed health personnel, and others involved in the individual’s educational program.

“Health assessment” is health data collection, observation, analysis, and interpretation relating to the eligible individual’s educational program.

“Health instruction” is education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the eligible individual’s health plan. Documentation of education and periodic updates shall be on file at school.

“Individual health plan” is the confidential, written, preplanned and ongoing special health service in the educational program. It includes assessment, planning, implementation, documentation, evaluation and a plan for emergencies. The plan is updated as needed and at least annually. Licensed health personnel develop this written plan with the education team.

“Licensed health personnel” includes licensed registered nurse, licensed physician, and other licensed health personnel legally authorized to provide special health services and medications.

“Prescriber” is licensed health personnel legally authorized to prescribe special health services and medications.

“Qualified designated personnel” is a person instructed, supervised and competent in implementing the eligible individual’s health plan.

“Special health services” includes, but is not limited to, services for eligible individuals whose health status (stable or unstable) requires:

1. Interpretation or intervention,
2. Administration of health procedures and health care, or
3. Use of a health device to compensate for the reduction or loss of a body function.

“Supervision” is the assessment, delegation, evaluation and documentation of special health services by licensed health personnel. Levels of supervision include situations in which:

1. Licensed health personnel are physically present.
2. Licensed health personnel are available at the same site.
3. Licensed health personnel are available on call.

41.96(2) Special health services policy. Each board of a public school or authorities in charge of an accredited nonpublic school shall, in consultation with licensed health personnel, establish policy and guidelines for the provision of confidential special health services in conformity with rules 41.94(256B,34CFR300) and 41.96(256B). Such policy and guidelines shall address and contain:

a. Licensed health personnel shall provide special health services under the auspices of the school. Duties of the licensed personnel include:

- (1) Participate as a member of the education team.
- (2) Provide the health assessment.
- (3) Plan, implement and evaluate the written individual health plan.
- (4) Plan, implement and evaluate special emergency health services.
- (5) Serve as liaison and encourage participation and communication with health service agencies and individuals providing health care.

(6) Provide health consultation, counseling and instruction with the eligible individual, the individual's parent and the staff in cooperation and conjunction with the prescriber.

(7) Maintain a record of special health services. The documentation includes the eligible individual's name, special health service, prescriber or person authorizing, date and time, signature and title of the person providing the special health service and any unusual circumstances in the provision of such services.

(8) Report unusual circumstances to the parent, school administration, and prescriber.

(9) Assign and delegate to, instruct, provide technical assistance and supervise qualified designated personnel.

(10) Update knowledge and skills to meet special health service needs.

b. Prior to the provision of special health services the following shall be on file:

(1) Written statement by the prescriber detailing the specific method and schedule of the special health service, when indicated.

(2) Written statement by the individual's parent requesting the provision of the special health service.

(3) Written report of the preplanning staffing or meeting of the education team.

(4) Written individual health plan available in the health record and integrated into the IEP.

c. Licensed health personnel, in collaboration with the education team, shall determine the special health services to be provided and the qualifications of individuals performing the special health services. The documented rationale shall include the following:

(1) Analysis and interpretation of the special health service needs, health status stability, complexity of the service, predictability of the service outcome and risk of improperly performed service.

(2) Determination that the special health service, task, procedure or function is part of the person's job description.

(3) Determination of the assignment and delegation based on the individual's needs.

(4) Review of the designated person's competency.

(5) Determination of initial and ongoing level of supervision required to ensure quality services.

d. Licensed health personnel shall supervise the special health services, define the level of supervision and document the supervision.

e. Licensed health personnel shall instruct qualified designated personnel to deliver and perform special health services contained in the eligible individual health plan. Documentation of instruction and periodic updates shall be on file at school.

f. Parents shall provide the usual equipment, supplies and necessary maintenance for such. The equipment shall be stored in a secure area. The personnel responsible for the equipment shall be designated in the individual health plan. The individual health plan shall designate the role of the school, parents and others in the provision, supply, storage and maintenance of necessary equipment.

281—41.97 Reserved.

281—41.98(256B,34CFR300) Transportation. Transportation of eligible individuals shall generally be provided as for other individuals, when appropriate. Specialized transportation of an eligible individual to and from a special education instructional service is a function of that service and, therefore, an appropriate expenditure of special education instructional funds generated through the weighting plan. Transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

41.98(1) *Special arrangements.* Transportation of an eligible individual to and from a special education support service is a function of that service, shall be specified in the IEP, and is an appropriate expenditure of funds generated for special education support services. When, because of an eligible individual's educational needs or because of the location of the program, the IEP team determines that unique transportation arrangements are required and the arrangements are specified in the IEP, the resident LEA shall be required to provide one or more of the following transportation arrangements for instructional services and the AEA for support services:

a. Transportation from the eligible individual's residence to the location of the special education and back to this individual's residence, or child care placement for eligible individuals below the age of six.

b. Special assistance or adaptations in getting the eligible individual to and from and on and off the vehicle, en route to and from the special education.

c. Reimbursement of the actual costs of transportation when by mutual agreement the parents provide transportation for the eligible individual to and from the special education.

d. Agencies are not required to provide reimbursement to parents who elect to provide transportation in lieu of agency-provided transportation.

41.98(2) *Responsibility for transportation.*

a. The AEA shall provide the cost of transportation of eligible individuals to and from special education support services. The AEA shall provide the cost of transportation which is necessary for the provision of special education support services to nonpublic school eligible individuals if the cost of that transportation is in addition to the cost of transportation provided for special education instructional services.

b. When individuals enrolled in nonpublic schools are dually enrolled in public schools to receive special education instructional services, transportation provisions between nonpublic and public attendance centers will be the responsibility of the school district of residence.

c. Transportation of individuals, when required for educational diagnostic purposes, is a special education support service and, therefore, an appropriate expenditure of funds generated for special education support services.

41.98(3) *Purchase of transportation equipment.* When it is necessary for an LEA to purchase equipment to transport eligible individuals to special education instructional services, this equipment shall be purchased from the LEA's general fund. The direct purchase of transportation equipment is not an appropriate expenditure of special education instructional funds generated through the weighting plan. A written schedule of depreciation for this transportation equipment shall be developed by the LEA. An annual charge to special education instructional funds generated through the weighting plan for depreciation of the equipment shall be made and reported as a special education transportation cost in the LEA Certified Annual Report. Annual depreciation charges, except in unusual circumstances, shall be calculated by the LEA according to the directions provided with the Annual Transportation Report and adjusted to reflect the proportion that special education mileage is of the total annual mileage.

41.98(4) *Lease of transportation equipment.* An LEA may elect to lease equipment to transport eligible individuals to special education instructional services. Cost of the lease, or that portion of the lease attributable to special education transportation expense, shall be considered a special education transportation cost and reported in the LEA Certified Annual Report.

41.98(5) *Transportation equipment safety standards.* All transportation equipment, either purchased or leased by an LEA to transport eligible individuals to special education instructional services or provided by an AEA, must conform to the transportation equipment safety and construction standards contained in 281—Chapters 43 and 44.

DIVISION X
PARENT PARTICIPATION

281—41.102(256B,34CFR300) Parent opportunity to examine records and participate in meetings.

41.102(1) General. In accordance with the provisions of rule 41.31(256B,34CFR99,300), the parents of an eligible individual must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the eligible individual and the provision of FAPE to the eligible individual; and participate in meetings in respect to identification, evaluation, and educational placement of the eligible individual and the provision of FAPE to the eligible individual.

41.102(2) Parent participation in meetings. Each agency shall provide notice consistent with rule 41.104(256B,34CFR300) to ensure that parents of eligible individuals have the opportunity to participate in meetings. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the eligible individual's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

41.102(3) Parent involvement in placement decisions. Each public agency shall ensure that the parents of each eligible individual are members of any group that makes decisions on the educational placement of the eligible individual. In implementing the requirements the public agency shall use procedures consistent with subrule 41.64(1). If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of the eligible individual, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of subrule 41.64(2). The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of the eligible individual, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

281—41.103(256B,34CFR300) Consent.

41.103(1) "Consent" means that:

a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

b. The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom; and

c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If the parent revokes consent, that revocation is not retroactive, i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked.

41.103(2) Parental consent. Informed parental consent must be obtained before the agency conducts an initial evaluation or reevaluation and before the initial provision of special education and related services to an eligible individual. Consent for initial evaluation may not be construed as consent for initial placement described in this subrule. Parental consent is not required before reviewing existing data as part of an evaluation or reevaluation or administering a test or other evaluation that is administered to all individuals unless, before administration of that test or evaluation, consent is required of parents of all individuals.

41.103(3) *Refusal.* If the parents of an eligible individual refuse consent for initial evaluation or reevaluation, the agency may continue to pursue those evaluations by using a preappeal conference as described in rule 41.106(256B,34CFR300), or a mediation or impartial due process hearing as described in division XI.

41.103(4) *Failure to respond to request for reevaluation.* Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the eligible individual's parent has failed to respond. To meet the reasonable measures requirement, the public agency must use procedures consistent with those in subrule 41.64(2).

281—41.104(256B,34CFR300) *Prior notice by the public agency and content of notice.* Written notice must be given to the parents of an eligible individual a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the individual or the provision of FAPE to the individual. The notice is intended to inform parents of an agency's final decision regarding a proposed or refused action. Such notice must be given to parents before the agency implements a proposed action, but after the agency's decision has been made. Following receipt of the written notice a parent or an agency has the right to request a preappeal conference or an impartial due process hearing. If the notice described in this rule relates to an action proposed by the public agency that also requires parental consent under rule 41.103(256B,34CFR300), the agency may give notice at the same time it requests parental consent.

41.104(1) *Notice content.* The written notice shall include:

- a. A description of the action proposed or refused by the agency.
- b. An explanation of why the agency proposes or refuses to take the action.
- c. A description of any options the agency considered and the reasons why those options were rejected.
- d. A description of each evaluation procedure, test, record or report the agency uses as a basis for the proposal or refused action.
- e. A description of any other factors that are relevant to the agency's proposal or refusal.
- f. A statement that the parents of an eligible individual have protection under the procedural safeguards of these rules and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
- g. Sources for parents to contact to obtain assistance in understanding the provisions of these rules.

41.104(2) *Notice requirements.* The notice under subrule 41.104(1) shall be:

- a. Written in language understandable to the general public.
- b. Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- c. If the native language or other mode of communication of the parent is not a written language, the agency shall take steps to ensure:
 - (1) That the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.
 - (2) That the parent understands the content of the notice.
 - (3) That there is written evidence that the requirements in this rule have been met.

41.104(3) *Procedural safeguards notice.* A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum, upon initial referral for evaluation; upon each notification of an IEP meeting; upon reevaluation of the child; and upon receipt of a request for due process under rule 41.107(256B,34CFR300). The procedural safeguards notice must include a full explanation of all the procedural safeguards and state complaint procedures relating to:

- a. Independent educational evaluation.
- b. Prior written notice.
- c. Parental consent.
- d. Access to educational records.
- e. Opportunity to initiate due process hearings.

- f.* The individual's placement during pendency of due process proceedings.
- g.* Procedures for eligible individuals who are subject to placement in an interim alternative educational setting.
- h.* Requirements for unilateral placement by parents of eligible individuals in private schools at public expense.
- i.* Mediation.
- j.* Due process hearings, including requirements for disclosure of evaluation results and recommendations.
- k.* Civil actions.
- l.* Attorneys' fees.
- m.* The state complaint procedures, including a description on how to file a complaint and the timelines under those procedures.

41.104(4) *Implementation.* The final decision of the agency for a proposed action indicated in the written notice requirements cannot be implemented for ten calendar days. The purpose is to give parents an opportunity to review the decision and request a preappeal conference or an impartial due process hearing if they disagree. If the written notice requirements are fulfilled at the IEP meeting, the ten-calendar-day waiting period should be documented on the IEP by the starting date of the new IEP exceeding the meeting date by ten calendar days. If the parent chooses to waive the ten calendar days, the starting date of implementation of the new IEP would be immediate with documentation and rationale for the waiver clearly stated.

281—41.105(256B,34CFR300) *Complaints to the department.* An individual or organization may file a signed written complaint that includes a statement that an agency has violated these rules, which include 41.84(2) "b"(3), and the facts on which the statement is based. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received. The department shall review, investigate and act on any written complaint within 60 calendar days of the receipt of such complaint although the time limit can be extended if exceptional circumstances exist. Within 60 calendar days of the receipt of such complaint, the department may carry out an independent on-site investigation, if the department determines that such an investigation is necessary. The individual or organization filing the complaint shall be given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. After the relevant information is reviewed, an independent determination shall be made by the department as to whether the agency is violating these rules. The department shall issue a written decision to the individual or organization filing the complaint that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the department's final decision. If needed, the department shall provide for negotiations, technical assistance activities or corrective action to achieve compliance.

281—41.106(256B,34CFR300) *Special education preappeal conference.*

41.106(1) *Procedures.* The parent, the LEA or the AEA may request a special education preappeal conference on any decision relating to the identification, evaluation, educational placement, or the provision of FAPE. Participation is voluntary.

a. A request for a special education preappeal conference shall be made in the form of a letter which identifies the student, LEA and AEA, sets forth the facts, the issues of concern, or the reasons for the conference. The letter shall be mailed to the department.

b. Within five business days of receipt of the request for the conference, the department shall contact all pertinent parties to determine whether participation is desired. A checklist shall be sent by the department to the LEA or AEA to receive information about the student.

c. A preappeal conference will be scheduled and held at a time and place reasonably convenient to all parties involved. Written notice will be sent to all parties by the department.

d. The LEA or the AEA shall submit the special education preappeal checklist to the department (with a copy to the parent) within ten business days after receiving the request.

e. The student's complete school record shall be made available for review by the parent prior to the conference, if requested in writing at least ten calendar days before the preappeal.

f. The individual's complete school record shall be available to the participants at the preappeal conference.

g. The preappeal conference shall be chaired by a mediator provided by the department.

h. If an agreement is reached, a written summary of the preappeal agreement shall be prepared by the assigned mediator and disseminated to all parties involved within ten business days following the conference.

i. If agreement is not reached at the special education preappeal conference, all parties shall be notified of the procedures to be followed in filing a formal special education appeal as described in division XI.

41.106(2) Assurances. The special education preappeal process shall in no way deny or delay a party's right to a full due process hearing if the party wishes to utilize the formal process. In addition, special education preappeal conference proceedings and offers of agreement during the conference shall not be entered as arguments or evidence in a hearing. However, the parties may stipulate to agreements reached in the special education preappeal conference.

41.106(3) Placement during proceedings. Unless the parties agree otherwise, the student involved in the preappeal must remain in the student's present educational placement during the pendency of the proceedings.

41.106(4) Withdrawals or automatic closures. The initiating party may request a withdrawal of the preappeal prior to the conference. Automatic closure of the department file will occur if any of the following circumstances apply:

a. One of the parties refuses to participate in the voluntary process.

b. The preappeal conference is held but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the preappeal to continue the placement as described in subrule 41.106(3) in the event a party wishes to pursue a hearing.

c. The preappeal conference is held and parties are able to reach an agreement and the agreement does not specify a withdrawal date. If a withdrawal date is part of the agreement, an agency withdrawal will occur on the designated date.

281—41.107(256B,34CFR300) Right to a due process hearing. A parent or a public educational agency may initiate a hearing on any decision relating to the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The hearing shall be conducted by an impartial administrative law judge pursuant to division XI of these rules.

281—41.108(34CFR300) Attorney fees. In any action or proceeding involving procedural safeguards, courts may award parents reasonable attorney fees under 20 U.S.C. 1415(i)(3) as part of the costs to the parent or guardian of a child or youth with a disability who is a prevailing party. Funds under 20 U.S.C. Chapter 33, Part B, may not be used to pay attorney fees or costs of a party related to an action or proceeding described in division XI. Attorney fees may not be awarded relating to any meeting of the IEP team unless such meeting is convened as a result of an administrative proceeding or judicial action.

281—41.109(256B,34CFR300) Independent educational evaluation.

41.109(1) Definitions. As used in this rule:

"*Independent educational evaluation*" means an evaluation conducted by a qualified examiner who is not employed by the agency responsible for the education of the individual in question.

"*Public expense*" means that the agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

41.109(2) General. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the agency.

a. If a parent requests an independent educational evaluation at public expense, the agency must, without unnecessary delay, either initiate a hearing under division XI to show that its evaluation is appropriate, or ensure an independent educational evaluation is provided at public expense unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

b. If a parent requests an independent educational evaluation, the public agency may ask why the parent objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

41.109(3) Locations and criteria of independent educational evaluations. Each agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained, and the applicable agency criteria for independent educational evaluations as described in subrule 41.109(6).

41.109(4) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation, if it meets agency criteria, must be considered by the agency in any decision made with respect to the provision of FAPE to the individual and may be presented as evidence at a hearing.

41.109(5) Administrative law judge. If an administrative law judge requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be at public expense.

41.109(6) Agency criteria. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for these criteria, an agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. These criteria shall be set forth in AEA board policy.

281—41.110(256B,34CFR300) Surrogate parent procedures.

41.110(1) Definitions as used in this rule:

"Eligible surrogate parents" are persons who are at least 18 years of age, known to be reliable and have had or will receive training in the education of individuals with disabilities. A person selected as a surrogate has no interest that conflicts with the interest of the individual represented and has knowledge and skills that ensure adequate representation of the individual. A person assigned as a surrogate may not be an employee of an agency that is involved in the education or care of the individual. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because the surrogate is paid by the agency to serve as a surrogate parent. Parents of other individuals with disabilities or other interested and knowledgeable persons may be appointed to serve as surrogate parents. An agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides noneducational care for the individual and who meets the standards in 41.110(2) *"b."* Foster parent is deemed a person acting as the parent of an individual and in such situations surrogate parent appointment is not necessary, unless circumstances indicate otherwise. A foster parent qualifies as a parent under these rules if the natural parents' authority to make educational decisions on the eligible individual's behalf has been extinguished under state law; the foster parent has an ongoing, long-term parental relationship with the eligible individual; the foster parent is willing to participate in making educational decisions in the eligible individual's behalf; and the foster parent has no interest that would conflict with the interests of the eligible individual. Group home directors and caseworkers may not be assigned as surrogate parents.

"Surrogate parent" means an individual who acts in place of a parent in protecting the rights of an individual in the educational decision-making process.

41.110(2) Appointment.

a. A surrogate parent for special education shall be appointed whenever the AEA documents that no parent can be identified; cannot discover the whereabouts of a parent after reasonable efforts; or the individual is a ward of the state and is known to be or is suspected of being an individual with disabilities.

b. In appointing a surrogate parent, it shall be ensured that there is no conflict of interest regarding the surrogate parent's responsibility to protect the special education rights of the individual; the surrogate parent is, or is willing to become, knowledgeable about the individual's disability and educational needs; and the surrogate parent is informed of the rights and responsibilities of serving as a surrogate parent.

c. The AEA director shall select a surrogate parent for special education purposes. The director shall contact the department of human services regional administrator to ascertain whether the proposed surrogate parent has any conflict of interest. The director shall appoint the surrogate parent by letter. The letter must contain the individual's name, age, educational placement and other information about the individual determined to be useful to the surrogate parent, and must specify the period of time for which the person shall serve. A copy of the letter shall be sent to the department.

41.110(3) Responsibilities. Confidential educational records may be reviewed by the surrogate parent who is acting as a parent as defined above. The surrogate parent may represent the individual in all matters relating to the identification, evaluation, and educational placement of the individual and the provision of FAPE to the individual.

41.110(4) Training.

a. Training shall be conducted as necessary by each AEA using a training procedure approved by the department, which includes rights and responsibilities of a surrogate parent, sample forms used by LEAs and AEAs, specific needs of individuals with disabilities and resources for legal and instructional technical assistance.

b. The department shall provide continuing education and assistance to AEAs upon request.

41.110(5) Monitoring. The department shall provide assistance to, and shall monitor, surrogate parent programs.

281—41.111(34CFR300) Transfer of parental rights at age of majority.

41.111(1) Basic requirements. When an eligible individual reaches the age of majority as defined by Iowa Code section 599.1, the agency shall provide any notice required by these rules to both the eligible individual and the parents. All other rights accorded to parents under these rules transfer to the eligible individual. Whenever rights are transferred, the agency shall notify the eligible individual and the parents of the transfer of rights as described in subrule 41.67(3). All rights accorded to parents under these rules transfer to eligible individuals who are incarcerated in an adult or juvenile, state, or local correctional institution.

41.111(2) Appointment of guardian. Transfer of rights to the eligible individual will occur as defined in subrule 41.111(1) unless a guardian is appointed through the provisions of Iowa Code chapter 633, division 13, part 1.

DIVISION XI
SPECIAL EDUCATION APPEALS

281—41.112(17A,256B,290) Definitions. As used in this division:

“Administrative law judge” means an administrative law judge designated by the director of education from the list of approved administrative law judges to hear the presentation of evidence and, if appropriate, oral arguments in the hearing. The administrative law judges are selected under authority granted by the board. Such authority provides for the contracting with qualified personnel to serve as administrative law judges who are not personally or professionally involved so as to conflict with objectivity and are not employees or board members of either state, intermediate or local education agencies involved in the education or care of the individual. The department shall keep a list of the persons who serve as administrative law judges. The list shall include a statement of the qualifications of each of those persons.

“Appellant” means the party bringing a special education appeal to the department.

“Appellee” means the party in a matter against whom an appeal is taken.

“Parties” means the appellant, appellee and third parties named or admitted as a party.

281—41.113(17A,256B) Manner of appeal.

41.113(1) Initiating a hearing.

a. A parent may initiate a preappeal conference or hearing when an educational public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the individual or the provision of FAPE to the individual. If a hearing is initiated, the department shall inform the parents of the availability of the mediation conference.

b. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the eligible individual, and the question of financial responsibility, are subject to the due process procedures of 34 CFR §§300.500-300.515.

c. A public agency may use the preappeal or hearing procedures to determine if the individual may be evaluated without parental consent. If a public agency requests a hearing and the administrative law judge upholds the agency, the agency may evaluate the individual without the parent's consent.

d. The appropriate AEA serving the individual shall be deemed to be a party with the LEA whether or not specifically named by the parent or agency filing the appeal. In instances where the individual is served through a contract with another agency, the school district of residence of the individual shall be deemed a party.

e. Under certain circumstances, an expedited hearing is provided under subrule 41.73(4).

41.113(2) Conducting a hearing. The hearing shall be conducted by the department.

41.113(3) Parent notice to the department. The parent of an individual with a disability or the attorney representing the individual shall provide notice (which shall remain confidential) to the department in a request for a hearing.

41.113(4) Content of parent notice. The notice required in subrule 41.113(3) must include the name of the individual; the address of the residence of the individual; the name of the school the individual is attending; a description of the nature of the problem of the individual relating to the proposed or refused initiation or change, including facts relating to the problem and a proposed resolution of the problem to the extent known and available to the parents at the time.

41.113(5) Model form to assist parents. The department's model form shall be made available to assist parents in filing a request for due process that includes the information required in subrules 41.113(3) and 41.113(4).

41.113(6) Notice. The director of education or designee shall, within five business days after the receipt of the appeal, notify the proper school officials in writing of the appeal and the officials shall, within ten business days after receipt of the notice, file with the department all records relevant to the decision appealed.

41.113(7) Free or low-cost legal services. The department shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency initiates a hearing.

41.113(8) Written notice. The director of education or designee shall provide notice in writing delivered by fax, personal service as in civil actions, or by certified mail, return receipt requested, to all parties at least ten calendar days prior to the hearing unless the ten-day period is waived by both parties. Such notice shall include the time and the place where the matter of appeal shall be heard. A copy of the appeal hearing rules shall be included with the notice.

41.113(9) Continuance. A request for continuance may be made by any party to the designated administrative law judge. The administrative law judge may grant specific extensions of time beyond 45 calendar days after the receipt of a request for a hearing. If a continuance is requested, it shall be heard and determined according to the provisions of this subrule.

41.113(10) Dismissal. A request for dismissal may be made to the administrative law judge at any time by the party initiating the appeal. A request or motion for dismissal made by the appellee shall be granted upon a determination by the administrative law judge that any of the following circumstances apply:

- a. The appeal relates to an issue that does not reasonably fall under any of the appealable issues of identification, evaluation, placement, or the provision of a free appropriate public education.
- b. The issue(s) raised is moot.
- c. The individual is no longer a resident of the LEA or AEA against whom the appeal was filed.
- d. The relief sought by the appellant is beyond the scope and authority of the administrative law judge to provide.
- e. Circumstances are such that no case or controversy exists between the parties.

An appeal may be dismissed administratively when an appeal has been in continued status for more than one school year. Prior to an administrative dismissal, the administrative law judge shall notify the appellant at the last-known address and give the appellant an opportunity to give good cause as to why an extended continuance shall be granted. An administrative dismissal issued by the administrative law judge shall be without prejudice to the appellant.

41.113(11) Time and place of hearing. The hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and individual involved.

281—41.114(17A,256B) Participants in the hearing.

41.114(1) *Conducting hearing.* The hearing shall be conducted by the administrative law judge.

a. Any person serving or designated to serve as an administrative law judge is subject to disqualification for bias, prejudice, interest, or any other cause for which a judge is or may be disqualified.

b. Any party may timely request the disqualification of an administrative law judge after receipt of notice indicating that the person will preside or upon discovering facts establishing grounds for disqualification, whichever is later.

c. A person whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.

d. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute must be appointed by the director of education from the list of other qualified administrative law judges.

41.114(2) *Counsel.* Any party to a hearing has a right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of individuals with disabilities.

41.114(3) *Opportunity to be heard—appellant.* The appellant or representative shall have the opportunity to be heard.

41.114(4) *Opportunity to be heard—appellee.* The appellee or representative shall have the opportunity to be heard.

41.114(5) *Opportunity to be heard—director.* The director or designee shall have the opportunity to be heard.

41.114(6) *Opportunity to be heard—third party.* A person or representative who was neither the appellant nor appellee, but was a party in the original proceeding, may be heard at the discretion of the administrative law judge.

41.114(7) *Presence of individual.* Parents involved in hearings must be given the right to have the individual who is the subject of the hearing present.

281—41.115(17A,256B) Convening the hearing.

41.115(1) *Announcements and inquiries by administrative law judge.* At the established time, the name and nature of the case are to be announced by the administrative law judge. Inquiries shall be made as to whether the respective parties or their representatives are present.

41.115(2) *Proceeding with the hearing.* When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the appeal hearing may proceed. When any absent party has been properly notified, it shall be entered into the record. When notice to an absent party has been sent by certified mail, return receipt requested, the return receipt shall be placed in the record. If the notice was in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the administrative law judge.

41.115(3) *Types of hearing.* The administrative law judge shall establish with the parties that the hearing shall be conducted as one of three types:

a. A hearing based on the stipulated record.

b. An evidentiary hearing.

c. A mixed evidentiary and stipulated record hearing.

41.115(4) *Evidentiary hearing scheduled.* An evidentiary hearing shall be held unless both parties agree to a hearing based upon the stipulated record or a mixed evidentiary and stipulated record hearing.

41.115(5) *Educational record part of hearing.* The educational record submitted to the department by the educational agency shall, subject to timely objection by the parties, become part of the record of the hearing.

281—41.116(17A,256B) Stipulated record hearing.

41.116(1) *Record hearing is nonevidentiary.* A hearing based on stipulated record is nonevidentiary in nature. No witnesses shall be heard nor evidence received. The controversy shall be decided on the basis of the record certified by the proper official and the arguments presented on behalf of the respective parties. The parties shall be so reminded by the administrative law judge at the outset of the proceeding.

41.116(2) *Materials to illustrate an argument.* Materials such as charts and maps may be used to illustrate an argument, but may not be used as new evidence to prove a point in controversy.

41.116(3) *One spokesperson per party.* Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

41.116(4) *Arguments and rebuttal.* The appellant shall present first argument. The appellee then presents second argument and rebuttal of the appellant's argument. A third party, at the discretion of the administrative law judge, may be allowed to make remarks. The appellant may then rebut the preceding arguments but may not introduce new arguments.

41.116(5) *Time to present argument.* Appellant and appellee shall have equal time to present their arguments and appellant's total time shall not be increased by the right of rebuttal. The time limit of argument shall be established by the administrative law judge.

41.116(6) *Written briefs.* Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties and, if desired, each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties not later than 45 calendar days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 calendar days. The time for filing briefs may extend the time for final decision.

281—41.117(17A,256B) Evidentiary hearing.

41.117(1) *Testimony and other evidence.* An evidentiary hearing provides for the testimony of witnesses, introduction of records, documents, exhibits or objects.

41.117(2) *Appellant statement.* The appellant may begin by giving a short opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence to be introduced and the conclusions which the appellant believes the evidence shall substantiate.

41.117(3) *Appellee statement.* The appellee may present an opening statement of a general nature and may discuss the type and nature of evidence to be introduced and the conclusion which the appellee believes the evidence shall substantiate.

41.117(4) *Third-party statement.* With the permission of the administrative law judge, a third party may make an opening statement of a general nature.

41.117(5) *Witness testimony and other evidence.* The appellant may then call witnesses and present other evidence.

41.117(6) *Witness under oath.* Each witness shall be administered an oath by the administrative law judge. The oath may be in the following form: "I do solemnly swear or affirm that the testimony or evidence which I am about to give in the proceeding now in hearing shall be the truth, the whole truth and nothing but the truth."

41.117(7) *Cross-examination by appellee.* The appellee may cross-examine all witnesses and may examine and question all other evidence.

41.117(8) *Witness testimony and other evidence.* Upon conclusion of the presentation of evidence by the appellant, the appellee may call witnesses and present other evidence. The appellant may cross-examine all witnesses and may examine and question all other evidence.

41.117(9) *Questions and other requests by administrative law judge.* The administrative law judge may address questions to each witness at the conclusion of questioning by the appellant and the appellee. The administrative law judge may request to hear other witnesses and receive other evidence not otherwise presented by the parties.

41.117(10) *Rebuttal witnesses and additional evidence.* At the conclusion of the initial presentation of evidence and at the discretion of the administrative law judge, either party may be permitted to present rebuttal witnesses and additional evidence of matters previously placed in evidence. No new matters of evidence may be raised during this period of rebuttal.

41.117(11) *Appellant final argument.* The appellant may make a final argument, not to exceed a length of time established by the administrative law judge, in which the evidence presented may be reviewed, the conclusions outlined which the appellant believes most logically follow from the evidence and a recommendation of action to the administrative law judge.

41.117(12) *Appellee final argument.* The appellee may make a final argument for a period of time not to exceed that granted to the appellant in which the evidence presented may be reviewed, the conclusions outlined which the appellee believes most logically follow from the evidence and a recommendation of action to the administrative law judge.

41.117(13) *Third-party final argument.* At the discretion of the administrative law judge, a third party directly involved in the original proceeding may make a final argument.

41.117(14) *Rebuttal of final argument.* At the discretion of the administrative law judge, either side may be given an opportunity to rebut the other's final argument. No new arguments may be raised during rebuttal.

41.117(15) *Written briefs.* Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties and, if desired, each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties not later than 45 calendar days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 calendar days. The time for filing briefs may extend the time for final decision.

281—41.118(17A,256B) Mixed evidentiary and stipulated record hearing.

41.118(1) *Written evidence of portions of record may be used.* A written presentation of the facts or portions of the certified record which are not contested by the parties may be placed into the hearing record by any party, unless there is timely objection by the other party. Such evidence cannot later be contested by the parties and no introduction of evidence contrary to that which has been stipulated may be allowed.

41.118(2) *Conducted as evidentiary hearing.* All oral arguments, testimony by witnesses and written briefs may refer to evidence contained in the material as any other evidentiary material entered at the hearing. The hearing is conducted as an evidentiary hearing.

281—41.119(17A,256B) Witnesses.

41.119(1) *Subpoenas.* The director of education shall have the power to issue (but not serve) subpoenas for witnesses, to compel the attendance of those thus served and the giving of evidence by them. The subpoenas shall be given to the requesting parties whose responsibility it is to serve to the designated witnesses. Requests for subpoenas may be denied or delayed if not submitted to the department at least five business days prior to the hearing date.

41.119(2) *Attendance of witness compelled.* Any party may compel by subpoena the attendance of witnesses, subject to limitations imposed by state law.

41.119(3) *Cross-examination.* Witnesses at the hearing or a person whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party necessary for a full and true disclosure of the facts.

281—41.120(17A,256B) Rules of evidence.

41.120(1) *Receiving relevant evidence.* Because the administrative law judge must decide each case fairly, based on the information presented, it is necessary to allow for the reception of all relevant evidence which shall contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant.

41.120(2) *Acceptable evidence.* Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The kind of evidence which reasonably prudent persons rely on may be accepted even if it would be inadmissible in a jury trial. The administrative law judge shall give effect to the rules of privilege recognized by law. Objections to evidence may be made and shall be noted in the record. When a hearing shall be expedited and the interests of the parties shall not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

41.120(3) *Documentary evidence.* Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available. Any party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

41.120(4) *Additional disclosure of information requirement.* At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. An administrative law judge may bar any party that fails to comply with these requirements from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

41.120(5) *Independent educational evaluation.* If deemed necessary, the administrative law judge may order an independent educational evaluation, which shall be provided at no cost to the parent and which meets criteria prescribed by the department.

41.120(6) *Opportunity to contest.* The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the administrative law judge. Parties shall be notified at the earliest practicable time, either before or during the hearing or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced unless the administrative law judge determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

41.120(7) *Administrative law judge may evaluate evidence.* The administrative law judge's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

41.120(8) *Decision.* A decision shall be made upon consideration of the whole record or such portions that are supported by and in accord with reliable, probative and substantial evidence.

281—41.121(17A,256B) Communications.

41.121(1) *Restrictions on communications—administrative law judge.* The administrative law judge shall not communicate directly or indirectly in connection with any issue of fact or law in that contested case with any person or party except upon notice and opportunity for all parties to participate.

41.121(2) *Restrictions on communications—parties.* Parties or their representatives shall not communicate directly or indirectly in connection with any issue of fact or law with the administrative law judge except upon notice and opportunity for all parties to participate as are provided for by administrative rules. The recipient of any prohibited communication shall submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding.

41.121(3) Sanctions. Any or all of the following sanctions may be imposed upon a party who violates the rules regarding ex parte communications: censure, suspension or revocation of the privilege to practice before the department, or the rendering of a decision against a party who violates the rules.

281—41.122(17A,256B) Record.

41.122(1) Open hearing. Parents involved in hearings shall be given the right to open the hearing to the public. The hearing shall be recorded by mechanized means or by certified court reporters. Any party to a hearing or an appeal has the right to obtain a written or, at the option of the parents, electronic, verbatim record of the hearing and obtain written or, at the option of the parents, electronic findings of fact and decisions. The record of the hearing and the findings of fact and decisions described in this rule must be provided at no cost to parents.

41.122(2) Transcripts. All recording or notes by certified court reporters of oral proceedings or the transcripts thereof shall be maintained and preserved by the department for at least five years from the date of decision.

41.122(3) Hearing record. The record of a hearing shall be maintained and preserved by the department for at least five years from the date of the decision. The record under this division shall include:

- a. All pleadings, motions and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of matters officially noted.
- d. All questions and offers of proof, objections and rulings thereof.
- e. All proposed findings and exceptions.
- f. Any decision, opinion or report by the administrative law judge presented at the hearing.

281—41.123(17A,256B) Decision and review.

41.123(1) Decision. The administrative law judge, after due consideration of the record and the arguments presented, shall make a decision on the appeal.

41.123(2) Basis of decision. The decision shall be based on the laws of the United States and the state of Iowa and the rules and policies of the department and shall be in the best interest of the education of the individual.

41.123(3) Time of decision. The administrative law judge's decision shall be reached and mailed to the parties within 45 calendar days after the department receives the original request for a hearing, unless a continuance has been granted by the administrative law judge for a good cause.

41.123(4) Impartial decision maker. No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case or other pending factually related matters. Nor shall any individual who participates in the making of any proposed decision be subject to the authority, direction or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing or a pending related matter involving the same parties.

281—41.124(17A,256B) Finality of decision.

41.124(1) Decision final. The decision of the administrative law judge is final. The date of postmark of the decision is the date used to compute time for purposes of appeal.

41.124(2) Civil action. Any party who is aggrieved by the findings and decision can bring civil action. A party initiating civil action in federal court shall provide an informational copy of the petition or complaint to the department within 14 days of filing the action. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

41.124(3) Department dissemination. The department, after deleting any personally identifiable information, shall transmit those findings and decisions to the state advisory panel and shall make those findings and decisions available to the public.

281—41.125(17A,256B) Individual's status during proceedings. Except as provided in subrule 41.73(2), during the pendency of any administrative or judicial proceeding regarding a hearing, unless the agency and the parents of the individual agree otherwise, the individual involved in the hearing must remain in the current educational placement. If the hearing involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings. If the decision of an administrative law judge in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state or local agency and the parents. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with individuals who are endangering themselves or others.

281—41.126 and 41.127 Reserved.

DIVISION XII
FINANCE

281—41.128(256B,282) Contractual agreements. Any special education instructional program not provided directly by an LEA or any special education support service not provided by an AEA can only be provided through a contractual agreement. The board shall approve contractual agreements for AEA-operated special education instructional programs and contractual agreements permitting special education support services to be provided by agencies other than the AEA.

281—41.129(256B) Research and demonstration projects and models for special education program development. Applications for aid, whether provided directly from state or from federal funds, for special education research and demonstration projects and models for program development shall be submitted to the department.

281—41.130(256B,273) Additional special education. Additional special education made available through the provisions of Iowa Code section 273.3 shall be furnished in a manner consistent with these rules.

281—41.131(256B,273,282) Extended school year services. Approved extended school year programs for special education support services, when provided by the AEA for eligible individuals, shall be funded through procedures as provided for special education support services. Approved extended school year instructional programs shall be funded through procedures as provided for special education instructional programs.

281—41.132(256B,282,34CFR300,303) Program costs.

41.132(1) Nonresident individual. The program costs charged by an LEA or an AEA for an instructional program for a nonresident eligible individual shall be the actual costs incurred in providing that program.

41.132(2) Contracted special education. An AEA or LEA may make provisions for resident eligible individuals through contracts with public or private agencies which provide appropriate and approved special education. The program costs charged by or paid to a public or private agency for special education instructional programs shall be the actual costs incurred in providing that program.

41.132(3) LEA responsibility. The resident LEA shall be liable only for instructional costs incurred by an agency for those individuals certified as entitled in accord with these rules unless required by 34 CFR §300.302, July 1, 1999.

41.132(4) Support service funds. Support service funds may not be utilized to supplement any special education programs authorized to use special education instructional funds generated through the weighting plan.

41.132(5) *Responsibility for special education for children living in a foster care facility.* For eligible individuals who are living in a licensed child foster care facility as defined in Iowa Code section 237.1 or in a facility as defined in Iowa Code section 125.2, the LEA in which the facility is located must provide special education if the facility does not maintain a school. The costs of the special education, however, shall be paid by the school district of residence of the eligible individual. If the school district of residence of the eligible individual cannot be determined, and this individual is not included in the weighted enrollment of any LEA in the state, the LEA in which the facility is located may certify the costs to the director of education by August 1 of each year for the preceding fiscal year. Payment shall be made from the general fund of the state.

41.132(6) *Responsibility for special education for individuals placed by court.* For eligible individuals placed by the district court, and for whom parental rights have been terminated by the district court, the LEA in which the facility or home is located must provide special education. Costs shall be certified to the director of education by August 1 of each year for the preceding fiscal year by the director of the AEA in which this individual has been placed. Payment shall be made from the general fund of the state.

41.132(7) *Proper use of special education instructional and support service funds.* Special education instructional funds generated through the weighting plan may be utilized to provide special education instructional services both in state and out of state with the exceptions of itinerant hospital services or home services, itinerant instructional services and special education consultant services which shall utilize special education support service funds for both in-state and out-of-state placements.

41.132(8) *Funding of ECSE instructional options.* Eligible individuals below the age of six may be designated as full-time or part-time students depending on the needs of the child. Funding shall be based on individual needs as determined by the IEP team. Special education instructional funds generated through the weighting plan can be used to pay tuition, transportation, and other necessary special education costs, but shall not be used to provide child care.

a. Full-time ECSE instructional services shall include 20 hours or more instruction per week. The total hours of participation in special education and general education, such as kindergarten or special education tuitioned preschool placements, may be combined to constitute a full-time program.

b. Part-time ECSE instructional services shall include up to 20 hours of instruction per week. The total hours of participation in special education and general education, such as kindergarten or special education tuitioned preschool placements, may be combined to constitute a part-time program.

c. Funds under 20 U.S.C. Chapter 33, Part C, may be used to provide FAPE, in accordance with these rules, to eligible individuals from their third birthday to the beginning of the following school year.

41.132(9) *Funding for instructional services.* When an LEA board approves a delivery system for instructional services as described in subrule 41.84(2), the director, in accord with Iowa Code sections 256B.9 and 273.5, will assign the appropriate special education weighting to each eligible individual by designating a level of service. The level of service refers to the relationship between the general education program and specially designed instruction for an eligible individual. The level of service is determined based on an eligible individual's educational need and independent of the environment in which the specially designed instruction is provided. One of three levels of service shall be assigned by the director:

a. Level I. A level of service that provides specially designed instruction for a limited portion or part of the educational program. A majority of the general education program is appropriate. This level of service includes modifications and adaptations to the general education program. (Reference Iowa Code section 256B.9(1) "b")

b. Level II. A level of service that provides specially designed instruction for a majority of the educational program. This level of service includes substantial modifications, adaptations, and special education accommodations to the general education program. (Reference Iowa Code section 256B.9(1) "c")

c. *Level III.* A level of service that provides specially designed instruction for most or all of the educational program. This level of service requires extensive redesign of curriculum and substantial modification of instructional techniques, strategies and materials. (Reference Iowa Code section 256B.9(1)“d”)

41.132(10) *Children with disabilities who are covered by public insurance.*

a. A public agency may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under these rules, as permitted under the public insurance program, except as provided in paragraph “b” of this subrule.

b. With regard to services required to provide FAPE to an eligible individual under these rules, the public agency:

(1) May not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided under these rules, but may pay the cost that the parent otherwise would be required to pay; and

(3) May not use a child’s benefits under a public insurance program if that use would:

1. Decrease available lifetime coverage or any other insured benefit;
2. Result in the family’s paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
3. Increase premiums or lead to the discontinuation of insurance; or
4. Risk loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures.

41.132(11) *Children with disabilities who are covered by private insurance.*

a. With regard to services required to provide FAPE to an eligible child under these rules, a public agency may access a parent’s private insurance proceeds only if the parent provides informed consent as defined in subrule 41.103(1);

b. Each time the public agency proposes to access the parent’s private insurance proceeds it must:

- (1) Obtain parent consent in accordance with paragraph “a” of this subrule; and
- (2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

281—41.133(256B,282) Audit. The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B, 273 and 282.

281—41.134(256B,282,34CFR300) Evaluations.

41.134(1) *Educational or medical evaluation.* If an educational or medical evaluation is requested by the AEA, the cost of the evaluation including travel expenses shall be at no cost to the parent and shall be paid by the AEA.

41.134(2) *Independent educational evaluation—administrative law judge.* If an independent educational evaluation is requested by an administrative law judge to assist in making a decision about FAPE, the cost of the independent educational evaluation including travel expenses shall be at no cost to the parent and shall be paid by the department.

41.134(3) *Independent educational evaluation—parent.* When parents have the right to an independent educational evaluation at public expense, rule 41.109(256B,34CFR 300), the cost of the independent educational evaluation including travel expenses shall be at no cost to the parent and shall be paid by the AEA.

41.134(4) *AEA policy and procedures.* The AEA shall establish policy and procedures for paying costs of an independent educational evaluation authorized under 34 CFR §300.502, July 1, 1999.

281—41.135(256B,273,282) Sanctions.

41.135(1) *Suspension of financial aid.* Any financial aid provided to an agency in support of special education may be suspended in whole or in part if the agency is found to be in noncompliance with any of the provisions of applicable statutes or rules. Suspension of financial aid would be only for the specific special education not meeting compliance requirements.

41.135(2) *Noncompliance. When it has been determined that an area of noncompliance exists, the department shall notify the involved agency in writing of the violation, the required corrective action with timelines, appeal rights in accordance with 34 CFR 76.401(d), and the financial aid to be suspended if corrective action does not occur. If corrective action within the prescribed time limit does not occur, the department shall amend its certification to the director of the department of management so that the financial aid in question will be subtracted from funds available to the agency in the next scheduled payment period. In turn, in accordance with 34 CFR §300.197, any public agency in receipt of a notice from the department that the agency has failed to comply with such corrective action shall, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this rule to the attention of the public within the jurisdiction of the agency.

281—41.136 and 41.137 Reserved.

DIVISION XIII
STATE PLAN

281—41.138(256,256B,273,281) State plan of education for all individuals with disabilities. In accord with 20 U.S.C. §1413 and 34 CFR §300.110, July 1, 1999, the state must submit a state plan to the Secretary of Education.

41.138(1) *Plan contents and process.* The state plan shall meet the requirements of 34 CFR §§300.121 through 300.156 and §§300.280 through 300.284, July 1, 1999.

41.138(2) *Applicability of final approved plan.* The provisions of the state plan are applicable to, shall be adopted by and implemented by all political subdivisions of the state that are involved in and have responsibility for the education of eligible individuals. These would include the department, LEAs, AEAs, and other state-operated special education programs as detailed in rule 41.1(256B,34CFR300).

281—41.139 and 41.140 Reserved.

DIVISION XIV
MONITORING OF COMPLIANCE

281—41.141(256B,442) Audit. The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B and 273.

281—41.142(256B,273,34CFR300) Compliance with federal and Iowa Codes. Each agency shall adhere to the provision of, and implementing regulations and rules to, 20 U.S.C. §§1400 et seq., applicable portions of 29 U.S.C. §794 pertaining to eligible individuals and Title 42 U.S.C. §§2116 et seq., and Iowa Code chapters 256B and 273.

281—41.143(34CFR300) Monitoring.

41.143(1) The agency's adherence to federal and state code shall be monitored on a regular basis by the department in accord with 20 U.S.C. §§1232 et seq. The department shall conduct monitoring activities based on predetermined and disseminated standards and procedures. Each agency shall provide the department with reports, records and access to programs and personnel needed to conduct monitoring activities.

*Reference added pursuant to agency request, IAC Supplement 7/26/00.

41.143(2) Copies of applicable standards shall be disseminated to each private school and facility to which a public agency has referred or placed a child with a disability.

41.143(3) An opportunity shall be provided for those private schools and facilities to participate in the development and revision of standards that apply to them.

281—41.144(256B,273,282) Sanctions. When it has been determined that an area of noncompliance exists, the department shall notify the involved agency in writing of the violation and the required corrective action with timelines. If the corrective action within the prescribed timelines does not occur, the department shall implement sanctions as described in 41.135(256B,273,282).

These rules are intended to implement Iowa Code chapters 256B and 273 and 34 CFR Part 300.

[Filed 12/13/66; amended 10/31/74]

[Filed 5/23/77, Notice 3/23/77—published 6/15/77, effective 7/20/77]

[Filed 7/28/81, Notice 4/29/81—published 8/19/81, effective 9/23/81]

[Filed 10/7/83, Notice 8/31/83—published 10/26/83, effective 11/30/83]

[Filed emergency 8/10/84—published 8/29/84, effective 8/10/84]

[Filed 3/4/85, Notice 10/10/84—published 3/27/85, effective 6/1/85*]

[Filed emergency 7/11/85—published 7/31/85, effective 7/11/85]

[Filed 7/15/88, Notice 6/1/88—published 8/10/88, effective 9/14/88]

[Filed 8/19/88, Notice 6/29/88—published 9/7/88, effective 10/12/88]

[Filed 4/13/90, Notice 2/7/90—published 5/2/90, effective 6/6/90]

[Filed emergency 9/14/90—published 10/3/90, effective 9/14/90]

[Filed 6/5/92, Notice 2/5/92—published 6/24/92, effective 7/29/92]

[Filed 6/11/93, Notice 3/31/93—published 7/7/93, effective 8/11/93**]

[Filed 5/12/95, Notice 3/29/95—published 6/7/95, effective 7/12/95]

[Filed 10/11/96, Notice 8/28/96—published 11/6/96, effective 12/11/96]

[Filed 12/10/99, Notice 10/6/99—published 12/29/99, effective 2/2/00]

[Filed 3/31/06, Notice 2/1/06—published 4/26/06, effective 5/31/06]

CHAPTER 42

Reserved

*Effective date of Chapter 12 delayed 70 days by the Administrative Rules Review Committee. Delay lifted by Committee on 7/8/85.

**Effective date of 41.2(3); 41.3(256B), definitions of "Autism," "Head injury," "Transition services," "Behaviorally disordered," paragraph "1," "Special education support programs and services"; 41.4(1); 41.18(2) "d"; 41.33(4); 41.33(6) delayed 70 days by the Administrative Rules Review Committee at its meeting held August 3, 1993; delay lifted by this Committee on 9/15/93.